

Law Report



LEGISLATIVE UPDATE: CHANGES ON THE HORIZON!

By Michael J. Elliott

Anyone who has read the newspaper lately knows a lot of legislation has been proposed in Springfield following the elections last fall. And, the real estate tax area is certainly seeing its share of activity. We would like to discuss two classes of bills that we believe will have a negative impact on property owners in Cook County if adopted in their present form.

ELIMINATION OF PROPERTY TAX APPEAL BOARD

Illinois taxpayers may contest their assessments before their county Board of Review. Appeals may be taken to the Property Tax Appeal Board (PTAB), a State administrative agency, or to the Circuit Court of the county. PTAB has been available to taxpayers outside of Cook County for many years but was first made available in Cook County in the late 1990s.

Prior to the advent of PTAB in Cook County, taxpayers were

limited to appealing Board of Review decisions to the Circuit Court.

Tax practitioners have found PTAB to be a viable, cost-effective venue for obtaining assessment relief in Cook County. This has been especially true for the owners of small properties because PTAB relief can often be obtained without incurring the cost of an appraisal or filing fees.

The problem, however, is that lawyers in Cook County have achieved much success in obtaining tax relief from PTAB and, as a result, taxing districts have been forced to issue substantial tax refunds. This is a major problem for non-home rule taxing districts (such as school districts) because tax caps limit the amount they can increase taxes in subsequent years to pay refunds. Consequently, they may be unable to recoup the funds

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paid toward tax refunds and may be forced to fund them from cash reserves.

The problem threatens to grow exponentially because median levels of assessment (rather than the substantially higher assessment percentages prescribed by Cook County ordinance) have been applied in a limited number of PTAB cases. Median levels of assessment for various classes of property in Cook County, as reported by the Department of Revenue, are substantially lower than the Cook County ordinance levels. Many people agree that if median levels of assessment are uniformly applied in PTAB cases, then numerous taxing districts would be bankrupted.

Legislation has been proposed to address these problems by eliminating PTAB as an appellate venue for owners of commercial and industrial property in Cook County (see SB 620, HB 2233 and HB 2475).

Many tax practitioners (Elliott & Associates included), Bar associations, tax watchdog groups and trade associations believe Cook County taxing districts have legitimate concerns that must be addressed immediately through appropriate legislation. However, these same people do not agree that elimination of PTAB for owners of commercial and industrial property in Cook County is the solution to the problem.

Compromise legislation has been proposed that would address the legitimate concerns of the taxing districts; namely, that PTAB would be prohibited from applying median levels of assessment in Cook County and that taxing districts would be allowed to increase tax levies beyond limits imposed by tax caps to recover PTAB and Court directed tax refunds. We believe this legislation will resolve the problems of the taxing districts yet retain an administrative agency where taxpayers can obtain fair assessments at a reasonable cost.

ASSESSMENT WITHOUT ACTUAL NOTICE

Legislation has been proposed (Senate Bill 615) that would allow reassessment of all properties in a major assessment class in a township or assessment district by application of



an equalization factor to all such properties. This legislation does not require actual (mailed) notice of re-assessment to the taxpayer. Instead, newspaper notice is sufficient. A more onerous version of this bill was proposed and defeated in the past.

A major reason for this legislation, according to its proponents, is to reduce sticker shock experienced by taxpayers when they receive triennial assessment notices which advise of large proposed assessment increases. The theory is that a taxpayer would be less angered or offended by receiving a smaller assessment increase each year rather than one large increase every third year.

We are greatly concerned about this legislation for a number of reasons.

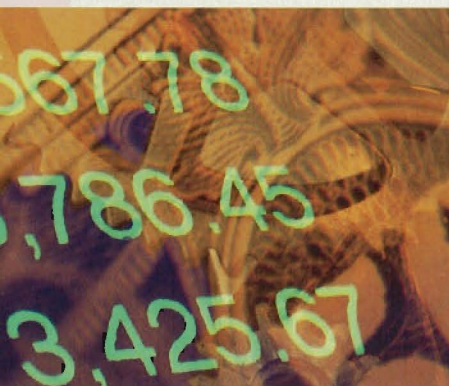
First, the proposed bill eliminates the current legal requirement of actual notice to the taxpayer. Therefore, the first time most taxpayers will realize their assessment has been increased will be when they receive their tax bill for that year. At

that point, however, the taxpayer will have no legal right to contest the assessment and will be forced to accept it.

Second, there is nothing in this bill to prevent annual re-assessment of all property in Cook County. The proponents indicate they only intend to assess annually without actual notice in limited geographic areas where property values have been skyrocketing. The proposed bill, however, does not contain any such limitations and may allow annual assessment increases without notice on a county-wide basis.

Third, many property owners will find it is not feasible to contest smaller annual assessment increases because of the fixed costs involved (such as appraisals) and the difficulty in finding attorneys who will accept small cases where the contingent legal fees will be a fraction of what they were in the past because of the smaller annual assessment increases.

In the final analysis, many small taxpayers will be forced to accept the assessments thrust upon them. And, fourth, taxpayers will pay no less taxes over a triennial assessment period and, given the time value of money, they will actually pay more. □



TAX refund

BOSCH CASE: THE IMPORTANCE OF PREPARING

EARLY

The Illinois Appellate Court issued a decision last year that has had a major impact on the tax appeal practice in Illinois. The Court considered whether the Property Tax Appeal Board (PTAB) could apply a median level of assessment percentage to the market value of property rather than the assessment percentage set forth in the Cook County Classification Ordinance (we will refer to this as the *Bosch* case). This issue is significant because median levels of assessment are substantially lower than ordinance levels.

hand and the taxpayer will be prohibited from submitting new evidence to PTAB.

This decision is diametrically opposed to many years of practice and procedure in Illinois.

The *Bosch* case has been appealed to the Illinois Supreme Court and this decision may be reversed. In the meantime, however, preparation of the Board of Review case is now more important than ever. Now, when preparing a Board appeal, the taxpayer and its attorney must develop a strategy for contesting the assessment before the Board and PTAB and must submit all necessary evidence to the Board.

A WORD OF CAUTION: Non-lawyer tax consultants are prohibited from representing taxpayers before Boards of Review and PTAB. Some tax consultants, however, have devised creative means to side-step this requirement. If a taxpayer hires a non-lawyer to prepare a Board of Review filing and later chooses to hire an attorney to appeal to PTAB, the attorney will be forced to argue the case using the same evidence prepared by the non-lawyer for the Board hearing. Certainly, this is not a desired outcome.

We believe taxpayers are better served by hiring educated, licensed, insured, competent attorneys to represent them at each step in the appeal. The fees are generally the same. And, one party – an attorney – can represent the taxpayer throughout the process. □

When rendering its decision in *Bosch*, however, the Court inadvertently (we believe) dropped a bomb that threatens to have far reaching consequences on tax appeals in Cook County. The Court held that PTAB hearings are *de novo appeals* and not *de novo hearings*. In *de novo hearings*, the parties can submit any evidence that is relevant and otherwise admissible under evidentiary rules. In *de novo appeals*, the parties are prohibited from submitting evidence to the appellate court which was not in the record of the trial court.

If PTAB cases are considered *de novo appeals*, PTAB will be limited to reviewing evidence previously submitted to the Board of Review in the case at



CHICAGO TO BE REASSESSED: A SUMMARY OF THE PROCESS

The City of Chicago is scheduled to be reassessed during 2003 as part of the Assessor's ongoing triennial (3 year) reassessment process. Notices will be released one township at a time beginning in late May and continuing through the Fall. We expect the last notices to be released by Thanksgiving.

Taxpayers have 45 days from the date their township assessment notices are mailed to file complaints with the Assessor. Time frames are tight and an effective



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appeal requires thoughtful preparation. Therefore, we like to begin our work before assessment notices are mailed.

Decisions of the Assessor may be appealed to the Board of Review. The Board will announce a 30-day filing window sometime after the Assessor completes its work and certifies the assessment roll. Taxpayers may file complaints to the Board individually or through an attorney. Non-lawyers are prohibited from representing taxpayers before the Board.

Board hearings are generally scheduled about 10 days after the filing deadline. The taxpayer or its attorney must submit a brief (written argument) and supporting documentation at the hearing and will have the opportunity to argue the case directly to the Commissioners or one of their deputies. The Board will render a written decision in about 30 to 60 days from the hearing.

If the taxpayer wants to appeal the Board's decision, they will have a choice of appeal routes: Property Tax

Appeal Board (PTAB) or Circuit Court. The choice of forum (PTAB or Court) is critical; however, the factors to be considered are beyond the scope of this article. Each of these forums requires that an appeal first be filed with the Board. Each forum also has its own filing deadlines. Appeals to PTAB must be made within 30 days following the post-mark date of the Board's decision. Appeals to Court must be made within 75 days following the due date of the second installment tax bill.

Each case must be monitored in subsequent assessment years. One-year only reductions will certainly require consideration and possibly an appeal the following assessment year. Material, detrimental reductions in property operations (fire, substantial vacancy or abnormal reductions in operating income, for example) may warrant additional assessment reductions. Lastly, appeals must be filed to the Board in subsequent years as a prerequisite to filing an independent appeal to PTAB or Court for that year. And, since relief in the first year of an assessment period is likely to be granted for subsequent years of that same period, it is crucial to file necessary Board, PTAB and/or Court complaints in subsequent years. □

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