

Law Report

SUMMER, 2004



LEGISLATIVE THREATS TO THE COMMERCIAL PROPERTY OWNER

By Michael J. Elliott

Property taxes paid by Cook County commercial property owners are among the highest in the United States. They are also two to three times higher than in the rest of State of Illinois.

If that were not bad enough, over the past year we have witnessed the introduction of several bills in the Illinois legislature that threaten to make this situation even worse. Fortunately, the determined efforts of a few lawyers (including members of our firm), bar associations, business and education groups have prevented these bills from becoming law—at least so far.

It is advantageous for politicians to propose "tax reform" measures that give the appearance of reducing property taxes or solving other property tax-related problems. In many cases, however, these so-called "reforms" are ill planned, do

not solve the problems they claim to and create even bigger problems for Cook County commercial property owners.

Following are two bills of greatest concern:

Senate Bill 620— Elimination of PTAB

All Illinois taxpayers have the right to appeal their assessments to their county Board of Review and then either to the Property Tax Appeal Board (PTAB) or the Circuit Court of their county.

PTAB is a taxpayer friendly forum. It does not charge a filing fee (as do the courts). The appeal procedures are simpler than in court and decisions are generally rendered faster.

SB 620 proposed to eliminate PTAB as an appellate venue for Cook County commercial property owners, but retain it as a venue for homeowners

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Michael J. Elliott

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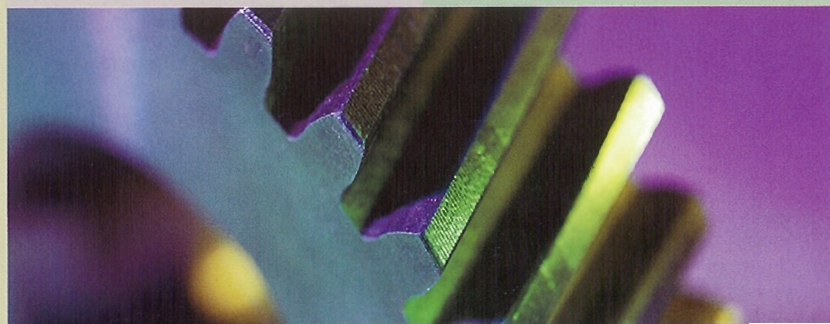
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and commercial property owners outside of Cook County. We view this as discrimination against the commercial property owner in Cook County.

The stated purpose of SB 620 was to help ailing school districts save money by reducing the amount of tax refunds they were forced to pay as a result of successful PTAB appeals. This objective, however, was to be accomplished at the expense of commercial property owners in Cook County by limiting their ability to contest assessments and, as a result, reducing the amount of tax refunds payable to them.

We vigorously opposed this bill. Our colleagues and I demonstrated that PTAB refunds were but a small portion of tax refunds paid by school districts so that elimination of PTAB would have a nominal impact on schools.

The school districts agreed. We forged a coalition of bar association, business and school lobbying groups to contest this bill. And, we support a recapture levy to solve the legitimate

problems faced by school districts. The recapture levy would allow districts to levy their taxpayers for all tax refunds they are forced to pay.

SB 620 was defeated in the Illinois house last spring. The recapture levy is currently pending before the legislature in another bill.

SB 1498 - 7% Assessment Cap

Property in Chicago was reassessed for the 2003 tax year (taxes payable in 2004) and assessments increased substantially in response to recent, skyrocketing real estate prices. In fact, the median assessment increase for Chicago homes increased by about 32% from 2002 to 2003.

Property tax caps enacted in the early 1990s limit property tax extensions (or the amount that can be billed to taxpayers) so they may increase from year to year by the rate of inflation (under 2.4% in 2003). As a result of tax caps, when assessments skyrocket, tax rates plummet. In fact, as a result of the large 2003 Chicago assessment increases, the Chicago tax rate is

projected to drop from 7.277% (2002) to 6.0201% (2003).

In order to further protect Cook County homeowners from the impact of skyrocketing assessments, SB 1498 proposes to cap increases in their taxable property values to 7% per year for three years. In the fourth year, any value that escaped taxation in the previous three years would then be taxed.

This tax cap would apply to all Cook County homeowners regardless of income or actual need. It is a politically popular bill because it helps so many homeowners/voters.

The biggest problems with SB 1498 are the need for it (in light of property tax caps) and the cost to other taxpayers (principally, commercial property owners).

SB 1498 will provide a tax reduction to about 7000,000 Cook County homeowners, but the savings appreciated by homeowners will come at the expense of higher taxes paid by everyone else.

Our firm prepared a model which indicates that SB 1498 will shift over \$700 million in

property taxes from homeowners to senior citizens, renters, apartment owners, commercial and industrial taxpayers over one, three-year assessment cycle. Our figures have been confirmed by the Illinois Department of Revenue.

Our model has been submitted to the Illinois legislature. We have lobbied the legislature extensively and testified several times before the Illinois House in opposition to this bill.

We believe some taxpayers (those with the highest assessment increases) may need more relief than is currently provided by tax caps; however, relief should be proportionate and targeted to those in need. The across-the-board relief proposed by SB 1498 is overkill and an expensive solution.

SB 1498 was approved by the House earlier this year and needs to be approved by the Senate before it becomes law. As of the date of this article (mid May, 2004), SB 1498 is stuck in the Senate, but the Senate has proposed its own slightly watered-down version of the modified 7% tax cap.



TAX reform

SAVE **MONEY** WITH COOK COUNTY TAX INCENTIVES

Cook County offers several tax incentives that can save qualifying taxpayers thousands of dollars by reducing property taxes. Taxpayers often fail to recognize that the property they own or are purchasing may qualify for these incentives. Since action must be taken early, failure to recognize these opportunities could be a costly mistake.

Here are the three most common tax incentives and the basic eligibility requirements:

CLASS 6B

This incentive applies to industrial property (manufacturing or warehousing). It lowers the assessment percentage from 36% to 16% (of market value) for a period of 10 years with a gradual phase back to 36% in years 11 and 12.

Class 6B applies when a taxpayer builds a new building or expands an existing building. To obtain the incentive, the taxpayer must obtain municipal approval and file an eligibility application prior to start of construction.

Class 6B also applies when the taxpayer purchases a vacant industrial building. The vacancy requirement will be satisfied if the

building was vacant for two years and, in some cases, as little as nine months. To obtain the incentive, the taxpayer must obtain municipal approval and file an eligibility application prior to re-occupancy.

Unfortunately, we frequently encounter taxpayers that purchase vacant industrial buildings, re-occupy them and then call us about their assessment. At that point, however, it is too late to obtain Class 6B and the client will have lost a substantial tax break.

CLASS 9

Class 9 incentive treatment applies to newly constructed apartment buildings and those that undergo major rehabilitation. This incentive reduces the assessment percentage from 30% to 16% for a period of 10 years with a gradual phase back to 30% in years 11 and 12.

To qualify as "major rehabilitation", the taxpayer must spend at least \$5.00 psf of living area on at least three building systems (electrical, heating, plumbing, roofing, exterior walls and elevators, for example).

In addition, at least 35% of the apartments must be leased for affordable rentals (currently, not

"We frequently encounter clients who own or have purchased an apartment building,...but fail to apply for Class 9 on a timely basis. This lost opportunity...is an expensive mistake"

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NORTHWEST SUBURBS TO BE REASSESSED. A SUMMARY OF THE PROCESS

The Northwest suburbs of Cook County are scheduled to be reassessed during 2004 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 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.

The Board operates under increasingly tighter time frames each year. Currently, Board hearings are 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 date.

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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more than \$803 for a one-bedroom apartment, \$964 for a two-bedroom apartment and \$1,115 for a three-bedroom apartment). In addition, maximum household income of Class 9 tenants cannot exceed 80% of the area's current median income (\$43,500 for a two-person household, \$48,950 for a three-person household and \$60,320 for a four-person household).

An eligibility application must be submitted to the Assessor prior to commencement of construction. Municipal approval is not required. The Assessor's office conducts inspections during construction to verify the necessary work has been completed.



TAX cuts

We frequently encounter clients who own or have purchased an apartment building, conduct a major rehabilitation (spending at least \$5 psf) and rent apartments for "affordable rentals" to tenants with qualifying income, but fail to apply for Class 9 on a timely basis. This lost opportunity to cut a tax bill about in half is an expensive mistake.

Assessor within one year of issuance of the No Further Remediation letter.

Taxpayers can often spend \$100,000 investigating and remediating contaminated soil and obtaining a No Further Remediation letter. In those cases, it is a shame not to obtain a tax incentive that will cut your tax bill in half.

CLASS C

Class C reduces the assessment of commercial and industrial property from 38% and 36%, respectively, to 16% for 10 years with a gradual phase back to 36% or 38% in years 11 and 12. It applies to contaminated property where the taxpayer receives a No Further Remediation letter from the Illinois EPA. In addition, the taxpayer must spend at least \$100,000 or 25% of the market value of the property (as set forth in the Assessor's records) on remediation costs (testing, engineering fees, legal fees, soil removal, monitoring, etc.).

The party who caused the contamination is not eligible for Class C incentive treatment.

To obtain Class C, the taxpayer must obtain municipal approval prior to remediation and file an application to the

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ELLIOTT & ASSOCIATES IS PLEASED TO ANNOUNCE THE HIRING OF ELIZABETH ALLEN

a former Deputy Commissioner from the Cook County Board of Review



Elizabeth Allen

Prior to joining Elliott & Associates, Beth was a staff attorney and a Deputy Commissioner at the Cook County Board of Review, where she headed the Condominium Department. She has substantial experience in the assessment field, having been involved in deciding thousands of cases while at the Board.

