

Law Report



TAX REFORM OR SHELL GAME?

By Joanne P. Elliott

Several bills are currently pending in the Illinois legislature that are being marketed as "Tax Reform" measures.

These bills cleverly give the illusion of "reforming" the Illinois tax system and bringing relief to the over-taxed citizens of Illinois. The proponents seek to obtain as much political mileage as they can for promoting these legislative fixes.

True tax reform (such as the tax caps adopted several years ago) limits government spending. By limiting spending you control taxes.

The bills currently under consideration, however, do nothing to control spending. They would merely shift the tax burden from one tax to another or from one taxpayer to another or to make it more difficult for taxpayers to obtain cost-effective tax relief. This is hardly tax reform.

We believe these bills are bad for Illinois taxpayers and particularly bad for owners of apartments, commercial and industrial properties in Cook County. They threaten to make an already horrible tax climate even worse.

Following are several of concern:

Property Tax Swap.

In an effort to reduce the magnitude of the property tax, legislation is pending to increase the State income tax from 3% to 5% for individuals and from 4.8% to 8% for businesses and concurrently reduce property taxes levied by school districts by 25%. For example, if income taxes were incrementally increased by \$1 Billion, property taxes levied by schools would be reduced \$250 Million.

This plan would send the increment (\$1 Billion, in this example) to the State where it

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would be divvied up and sent back to Illinois schools according to rules developed in Springfield.

Currently, the property tax is a predictable, effective local tax. Within legal limits, local government determines the amount of the tax to be levied on local residents to pay for local services provided to them. All taxes collected—100%—are remitted to the local taxing districts by the County Collector. If the citizens of the district wish to increase taxes beyond limits imposed by tax caps—to provide more or better services—they may do so, as they see fit, by referendum.

The property tax swap threatens to take control away from local schools. Local tax money will be sent to Springfield, but what portion will be remitted back to local school districts? Some schools will receive more than otherwise—and fare better. Others will receive less than otherwise—and fare worse. But what does this shift really solve? And will some money “leak” out of the system and find its way into places other than Illinois schools? The Illinois legislature did just that with casino gambling taxes that were earmarked for education but ended up elsewhere.

Annual Reassessment In Cook County.

In Cook County, property is assessed on a triennial (3-year) basis. During a reassessment year, the Assessor is required to reassess each parcel of property in an assessment district and increase its assessment to reflect its then market value.

Pending legislation (SB 177) proposes to allow the Cook County Assessor to re-assess property annually. To make this process cost-efficient for the County, the Assessor would be able to increase assessments on a mass basis by increasing groups of properties by a fixed percentage.

An earlier version of this bill would have allowed the Assessor to reassess annually without providing actual notice to the taxpayer. The Assessor was merely required to publish a legal notice indicating that assessments of a certain class of property in a certain geographic area were being increased by a certain percentage. The first time most taxpayers would be aware of the reassessment is after issuance of the tax bill, but by that time it is too late to contest.

We believe reassessment without notice is unfair. Fundamental fairness requires that taxpayers be given notice and an opportunity to contest their assessments before their tax bill issues.



“It appears to us these proposals amount to nothing more than a shell game. They do nothing to reform the property tax system.”

We also think annual reassessment is a bad idea. This practice would require Cook County taxpayers to review assessments each and every year and, in many cases, force them to contest assessments each and every year. Many taxpayers have the fortitude to contest annually, but they will pay a price to do so (increased appraisal fees, attorneys fees, etc.). Many others, particularly owners of small properties, will find it is too time consuming or simply not cost-effective to contest small increases

each year. These taxpayers will soon discover they are being spoon-fed annual tax increases that will add up and compound over time. And we believe that is the real objective of this bill.

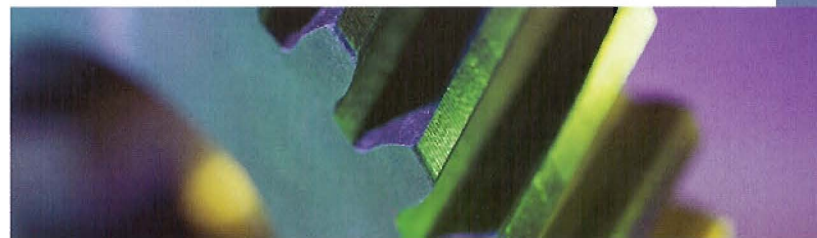
Tougher Requirements. After appealing an assessment to the Board of Review, the taxpayer may appeal to either the state Property Tax Appeal Board (PTAB) or the Circuit Court and obtain a tax refund. Pending legislation would make it more difficult to obtain tax refunds before both PTAB and the Circuit Court.

Senate Bill 356 would make it more difficult for taxpayers to win assessment appeals before the Property Tax Appeal Board by increasing the taxpayer’s burden of proof. Currently, a taxpayer must demonstrate its assessment is excessive by a “preponderance of the evidence”. SB 356 would require “clear and convincing” proof instead.

Senate Bill 677 would force taxpayers filing appeals in Court to notify each affected taxing district that an appeal was filed and give the tax district the right to intervene in that appeal.

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It appears to us these proposals amount to nothing more than a shell game. They do nothing to reform the property tax system.



MICHAEL ELLIOTT TESTIFIES BEFORE LEGISLATURE

Michael J. Elliott testified several times last year before the Illinois Legislature on behalf of the Illinois Property Tax Lawyers Association, the Chicagoland Chamber of Commerce and others with regard to the controversial 7% assessment cap that was narrowly adopted into law last summer. He prepared a financial impact analysis that demonstrated this law would shift over \$600 million in property taxes to commercial property owners.

As a result of Mr. Elliott's efforts, the constitutionality of the 7% assessment cap is currently being contested in the Circuit Court of Cook County. Mr. Elliott is a consultant to the parties contesting this law.

WE'VE MOVED!

Elliott & Associates recently relocated its offices to **1430 Lee Street in Des Plaines.** This facility more than doubled our space and will enable our staff to better serve our clients.



SOUTH SUBURBS TO BE REASSESSED: A SUMMARY OF THE PROCESS

The South suburbs of Cook County are scheduled to be reassessed during 2005 as part of the Assessor's ongoing triennial (3 year) reassessment process. Notices will be released one township at a time beginning in late April 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

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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.

