Elliott & Associates

Law Report

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THERE'S NO SUBSTITUTE FOR GOOD LAWYERING

By Michael J. Elliott

> ***Good lawyering... can, and usually does, result in a tax bill that is as low as it can possibly be.***

Each year, thousands of complaints are filed by taxpayer representatives (attorneys and non-lawyer tax consultants) to contest tax assessments of property in Cook County.

The non-lawyer tax consultants who practice in this area tend to exhibit an understanding of *basic* appraisal theory and generally recognize the standard/boilerplate opportunities for obtaining assessment reductions. They are, however, not trained to understand the nuances of the law and how the law might be applied to a given case in order to *require* that a tax reduction be made. Moreover, while non-lawyer tax consultants are permitted to represent taxpayers before the Cook County Assessor, they are prohibited from representing them before the Cook County Board of Review, the Property Tax Appeal Board and the Illinois Courts. Substantial assessment reduction opportunities exist when tax complaints are filed to the Board, PTAB and Court, so the taxpayer who is represented by a tax consultant will likely be at a disadvantage.

Good lawyering (i.e. a thorough knowledge of the tax laws, case law and appraisal theory and the ability to effectively persuade an assessing official, judge or jury) can, and usually does, result in a tax bill that is as low as it can possibly be. Following are recent examples of assessment reductions obtained by this and other competent law firms that have resulted in substantial tax savings that may not have been obtained had a non-lawyer tax consultant been involved or had the taxpayer representative fallen into the habit of making a standard/boilerplate argument before the assessing officials.

The 2-1/2 Times Cases. Several cases are pending before the Illinois Appellate Court brought by other Chicago law firms that raise interesting and important constitutional questions that could have a broad impact on commercial and industrial property in Cook County (the 2-1/2 times cases). Property in Cook County is assessed at varying assessment percentages established by County Ordinance according to property type. Many (if not most) assessment protest cases involve questions of the market value of the property being assessed. In the 2-1/2 times cases, the taxpayer's attorneys raised an interesting question of Illinois Constitutional law which, if accepted, would *require* certain assessments to be reduced. The Illinois Constitution permits Cook County to classify property for assessment purposes; however, the Constitution requires that the level of assessment of the highest class shall not exceed 2-1/2 times the level of assessment of the lowest class. Cook County commercial property is assessed at the highest level (38%) while residential is assessed at the lowest level (16%). On first blush, this assessment method appears to satisfy the 2-1/2 times requirement. The Illinois Department of Revenue reports, however, that based upon its analysis of sales transactions, Cook County Commercial and Industrial Property actually experiences a median level of assessment relative to sales price of more than 3 times the level of residential. The taxpayer's attorneys obtained substantial assessment reductions based upon this novel theory. Unfortunately, this is a hot issue and these cases are being actively appealed by the assessing authorities. The final outcome is yet to be determined.

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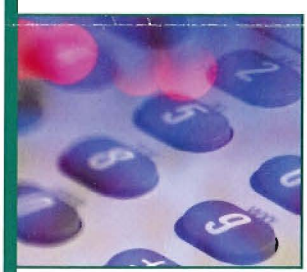
South Water Market Properties. Properties on Chicago's South Water Market produce facility routinely sell for $200,000 to $250,000 per warehouse unit or stall. These sales prices on a per square foot basis are substantially higher than other industrial properties of comparable size and age in a similar market area. Our firm was able to convince the assessing officials to reduce the assessed market values of these units to approximately $55,000 per unit, on the average, notwithstanding recent sales prices in excess of $200,000 per unit. We achieved this result because of competent appraisal evidence, an understanding of pertinent law and an understanding of advanced appraisal theory. As it turns out, units on South Water Market sell for a premium in comparison to similar properties because of the their location within the South Watermarket Produce complex (which houses over 100 produce businesses in a single campus). This premium, according to our appraisal evidence, represents "business value" (or the premium a produce company would pay for increased sales revenue and/or business efficiencies resulting from the location of their business in a large produce market). Our reading of the law indicates that "business value" is clearly not subject to real estate taxation in Illinois. As a result of our understanding of the law and the appraisal evidence, we were able to convince the assessing officials not to assess the "business value" premium paid and to assess the South Water Market Units at a level commensurate with similar industrial buildings located elsewhere which sold at substantially lower per square foot values.



Cellular Towers. Our firm was hired by a telecommunications company that operates communication towers nationwide, including a 400 foot tall lattice tower in Arlington Heights. Illinois law provides for real estate taxes to be levied on "The land ... and also all buildings, structures and improvements, and other permanent fixtures thereon ...". Our client's communications tower was reassessed in 2001 as taxable real property. We reviewed Illinois case law and conducted a thorough interview of our client. We learned that this tower is somewhat of a permanent fixture as it is bolted to a concrete foundation; that communications towers like our client's are often sold, dismantled, moved and re-constructed as a result of changes in technology and demands of the marketplace; that a tower was previously located at this site and was recently dismantled and moved; that the tower currently located on this site was recently constructed after the old tower was removed; and that a fairly active market exists for selling, acquiring, moving and reconstructing these types of towers. Our legal research discovered two lines of cases relating to taxation of analogous structures: one line held the structures in question were permanent fixtures subject to taxation and the other line held otherwise. We were able to persuade the assessing officials that the facts and case law support the proposition that our client's tower was not a permanent fixture and not subject to taxation. This client will realize an *annual* tax savings of approximately $60,000 per year.

Hotels and Motels. Hotels and motels are unique property types - they are businesses that include real estate. The sales price of a hotel or motel in an arms-length transaction may be conclusive evidence of the bundle of rights acquired by the buyer (also known as "going concern value") but it almost always *materially* overstates the value of the *taxable* real property. When an investor purchases a hotel or motel, he generally acquires the land, building, permanent fixtures (plumbing fixtures, HVAC fixtures, etc.), personal property (room furnishings, restaurant and office equipment, supplies, etc.), an assembled and trained workforce, established business name and reputation and an affiliation with a national hotel chain which enhances room rentals and ensures higher levels of occupancy than otherwise (goodwill). Under Illinois Law, land, building and permanent fixtures associated with a hotel or motel are taxable. Personal property and goodwill are not. We have successfully reduced assessments of numerous hotels and motels by obtaining quality appraisal evidence from appraisers who understand the complex appraisal issues involved and by properly framing the legal and appraisal issues for the assessing officials.

When examining and contesting assessments, it is easy to fall into the trap of boilerplate thinking. In many situations, boilerplate arguments will result in acceptable assessment reductions but in other situations this approach will leave substantial money on the table. In the final analysis, there is no substitute for good lawyering: the ability to see the big picture, apply a thorough knowledge of the law and appraisal theory to the facts, creatively frame the issues, and utilize the art of persuasion to obtain the desired result.

"The new law lowers the assessment percentage of Class 3 property to 26%...This change should provide substantial tax relief for apartment building owners."

HOT OFF THE PRESSES: NEW TAX CHANGES IN COOK COUNTY

On April 9, 2002, the Cook County Board of Commissioners approved amendments to the Cook County Classification Ordinance that were proposed by Assessor James M. Houlihan. These changes include a phased-in reduction of the assessment level of apartment housing, the creation of a tax incentive class intended to promote the supply of Section 8 housing, and the extension of an existing incentive designed to preserve landmark properties.

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Multi-Family Apartment Buildings

Under the previous law, apartment and mixed-use buildings (apartments over stores) containing more than six units (Class 3), were assessed at 33% of fair cash value. The new law lowers the assessment percentage of Class 3 property to 30% in tax year 2003 and 26% in tax year 2004 and thereafter. This change should provide substantial tax relief for apartment building owners.

Class S - Section 8 Housing

The Cook County Classification Ordinance contains a number of tax incentives designed to promote certain identified public interests by offering tax reductions to qualifying real estate projects. The most recent tax incentive, Incentive Class S, seeks to preserve the stock of affordable, Section 8 housing. Qualifying projects will benefit from a reduction in assessment levels from 33% to 16%.

This incentive was adopted in response to the reduction in Section 8 housing units resulting from increasing market rents in neighborhoods where revitalization is taking place, the recent wave of condominium conversions and the fear of even greater reductions in the Section 8 housing stock as existing Section 8 contracts expire.

Following are some of the *basic* requirements for Class S:

- 20% or more of the units in the building must be rented to Section 8 tenants;
- The building must be subject to a Section 8 contract that has expired or is about to expire;
- The building owner must renew the Section 8 contract under the HUD "Mark Up to Market" option;
- The building owner musts agree to retain the existing number of Section 8 units for at least 5 years after expiration of the expiring or expired Section 8 contract;
- The building owner must notify the Assessor that it has applied for renewal of the Section 8 Contract under the Mark Up To Market Option within a specified time frame; and

The Class S assessment reduction will be in proportion to the number of Section 8 units to the total number of units in the building.

Class L - Landmarks

Under the previous law, the County sought to encourage the preservation and rehabilitation of historically and architecturally significant *commercial and industrial buildings* located in Cook County. The new law expands this benefit to include commercial and industrial buildings, apartment and mixed buildings containing more than 6 units (Class 3), Class 4 Not-For-Profit and any contributing building within a designated landmark or historic district.

In order to qualify for Class L, a buildings must be a *historic structure within a specifically designated historic or landmark district* (according to a local ordinance approved by a Local Government certified by the Illinois Historic Preservation Agency) which has undergone a *Substantial Rehabilitation* (rehabilitation investment of 50% or more of the building's full market value according to the Assessor's records in the assessment year prior to commencement of rehabilitation). Class L buildings must also meet certain rehabilitation requirements that ensure the building retains its design, materials and appearance from the period of historical significance.

Class L buildings will be assessed at 16% of market value for a period of 10 years, with a phase in to normal assessment levels in years 11 and 12. Land associated with a Class L building will be assessed at 16% of market value only if the Class L building was vacant and unoccupied for at least 24 continuous months prior to filing of the eligibility application with the Assessor.

SOUTHWEST SUBURBS TO BE REASSESSED A SUMMARY OF THE PROCESS

The southwest suburbs of Cook County are scheduled to be reassessed during 2002 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.

In prior years, taxpayers had 30 days from the time of mailing of assessment notices for their Township to file a complaint with the Assessor. Taxpayers now have 45 days. Nevertheless, time frames are tight and an effective appeal requires thoughtful preparation. Therefore, we like to begin our work before assessment notices are mailed.

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After the complaint, brief and supporting documents are filed, the Assessor will notify the taxpayer (or its representative, if a representative filed the complaint) of its decision: One-year only Reduction, Reduction for the remainder of the assessment period or No Change. Usually, the decision is issued within 30 to 60 days after evidence is submitted.

The taxpayer may appeal the Assessor's decision to the Board of Review in order to obtain a further reduction. A complaint may be filed to the Board even if no complaint was filed to the Assessor.

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 14 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.

The taxpayer will then 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 before a currently undeterminable date which generally occurs around Thanksgiving of each year.

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 pre-requisite 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.