

Omitted Assessments: When the Assessor's Omission is your Client's New (and sometimes higher) Tax Bill

By: Vesna Marusic

INTRODUCTION

Real estate tax ["tax"] is a tax based on a property's value.¹ It is sometimes referred to as an *ad valorem* tax, meaning "according to value."² How are values for these taxes determined? Property is first discovered, then listed on the assessment rolls then assessed. Property values are determined by local assessing officials, the local county Board of Review or the Illinois Department of Revenue ["IDOR"].³ An assessment is the property value that officially is entered into the county assessment books.⁴ The Illinois Property Tax Code ["IPTC"] attempts to eliminate any uncertainty that exists with respect to the assessment of taxable property that has not been assessed ever or in a number of years.

OMITTED PROPERTY IN GENERAL

Often the situation arises where newly constructed buildings or other improvements appear on property that was already assessed. Property may be misclassified as vacant or unimproved, but in reality it is developed with residential property, commercial property, or other improvements. Such is the case with omitted property, property for which all or part of the taxes were not paid because the property or improvements were not included in the assessment process.⁵ Under Illinois statute, a property owner, as of the first of the year, is liable for the increased taxes on a proportionate basis resulting from the construction of new buildings, structures or improvements on the property from either the date when the construction permit was issued, or from the date the new or added improvement was rendered habitable or ready for its intended use, to December 31 of that year.⁶

NOTICE REQUIREMENT

The County Tax Assessor ["assessor"] may not know of construction or improvements to land unless the property owner informs him of such. It is important for the property owner to notify the assessor within 30 days of the completion of the improvements accompanied with a request that the property be assessed, pursuant to §9-180 of the IPTC.⁷ There are also stringent requirements that the property owner must obey with respect to the notice. The notice must include the legal description of the property. It must also be sent by certified mail with a return receipt requested.⁸

What about constructive notice? Shouldn't the assessor be placed on notice of any construction or improvements when permits are issued by the city or

municipality to commence construction or begin making improvements on the subject property? This argument can be made, but it would defeat the purpose of the narrow notice requirement set out in the IPTC. All property owners, whether new owners, or owners who wish to improve or construct new properties or structures on their existing property should strictly comply with the notice requirement of the IPTC.

ASSESSMENT OF OMITTED PROPERTY

What happens after the assessor receives notice of construction or improvements made upon a person's property? The assessor's office then issues an omitted assessment for the one or more years in which the property was not assessed. Depending on the population of the county, either the Board of Review or the county assessor has the authority to assess omitted property.

Counties with more than 3,000,000 inhabitants

In counties of 3,000,000 inhabitants or more,⁹ after certification of a township, the assessor, at his/her own initiative, or at the urging of the Board of Review,¹⁰ has the authority to assess any properties which may have been omitted from assessments for the current year or any other year(s).¹¹

Will every omitted assessment be taxed? Not necessarily. The government too has certain guidelines and time limitations. Three events have to take place in order for the property owner to be relieved of his obligation to pay. First, the property in question had to be last assessed as unimproved. Second, a proper 30 day notice was given by the property owner to the assessor of subsequent improvements, along with a requested reassessment. Third and finally, the assessor did not reassess the property within 16 months following the receipt of that notice from the property owner.¹²

We now see that the IPTC imposes two crucial time limitations upon the property owner and assessor. The property owner has 30 days in which to notify the assessor of any construction or improvement made upon his land, and the assessor has 16 months to respond and reassess that property. Generally, everyone pays property taxes.¹³ However, this 16 month time limitation provides the property owner with an exception because if the assessor does not reassess the property within 16 months, the property owner is relieved of tax liability.

Once the reassessment is complete, when must the tax be paid? Under the IPTC, an assessment notice based on the omitted assessment should be prepared and mailed at or around the same time as the estimated first installment property tax bill for the preceding year is prepared and mailed. The omitted assessment tax bill is not due simultaneously with the first installment property tax bill. Rather, it is due when the second installment property tax bill becomes

due. If the omitted tax assessment bill is not paid when the second installment property tax bill is paid, it is deemed delinquent and will carry with it an interest rate of 1.5% per month until it is paid¹⁴ or forfeited.¹⁵

The assessor has to make all changes and corrections that are ordered by the Board of Review. After the assessment books are completed for any town or taxing district, the assessor may certify the books, for the purpose of revision.¹⁶

Counties with less than 3,000,000 inhabitants

In counties of 3,000,000 inhabitants or less, omitted property is assessed in the same way as larger counties with 3,000,000 inhabitants or more. Who has the power to assess omitted property in these smaller counties? Unlike their larger counterparts which grant the assessor ample authority, the power to assess omitted property in smaller counties of 3,000,000 or less belongs to the Board of Review. Once the Board of Review assesses omitted property, no succeeding Board will have opportunity to review this assessment.¹⁷

DEFECTIVE DESCRIPTION

Property is omitted from assessments for various reasons. A defective description or assessment may exist, which means a description or assessment is included which omits improvements made on the property. As a result, a part of the taxes for the total value of the property in its new improved condition remain unpaid.¹⁸ In each of these situations, when the property is discovered, it gets listed and assessed by the assessor¹⁹ (in counties of 3,000,000 inhabitants or more) or by the Board of Review (in counties of 3,000,000 inhabitants or less).²⁰ If there is property that is subject to assessment by the IDOR then they will list and assess that property.²¹

An Illinois case addressed assessing improved real estate. In People ex rel McDonough v. Birtman Electric Co.²² the court held that “in the case of improved real estate the entity is composed of two components: one land and the other buildings and improvements. If both are listed and valued separately for assessment purposes the assessment cannot be reviewed in a subsequent year, but if either the land itself or the building and improvements have been omitted then that component part which was so omitted becomes a subject of assessment for taxation in a subsequent year.”

In McDonough, the defendant McDonough [“defendant”] paid taxes assessed against his property. The assessment only included the land, but omitted the buildings and improvements that existed on the property during that year. Two years later, the Board of Review assessed an additional amount to reflect the buildings and improvements that were initially omitted. Defendant appealed that assessment, but the court affirmed, stating that retroactive assessments are

permitted if the original assessment was based upon a defective description of the property.²³

INTEREST

In analyzing the back taxes for omitted property, the assessment authority, be it the assessor, the Board of Review or the IDOR, imposes a 10%-per year interest charge against the property.²⁴ A grace period is also granted, two years after the time the first correct tax bill should have been received by the property owner.²⁵ It appears that the first two years of the omitted assessment are not subject to interest.

The 10% interest will not be chargeable to the owner in situations where property or acreage was omitted by either an inaccurate survey or other ministerial assessor error and the property owner has paid its tax bills as received for the for the year(s) of omission of the parcel.²⁶

CHANGE IN USE OF THE PROPERTY

What happens when property that is classified as exempt is no longer exempt or a change in ownership of the property exists? The IPTC provides clarification for a number of common scenarios. If the property use has changed, or if there has been a change in leasehold estate, or a change in titleholder of record by purchase, grant, taking or transfer, then the transferee is obligated to notify the assessor within 30 days.²⁷ The notice should be in writing, containing the name and address of the property owner, the legal description of the property and the property index number of the property, when an index number exists. Additionally, the notice must be sent by certified mail with a return receipt requested.²⁸ If for some reason the property owner fails to give notice and as a result the assessor continues to list the property as exempt in later years, then the property is considered omitted property.²⁹

American Medical Association [“AMA”] v. Edward J. Rosewell³⁰ is a classic example of a dispute arising from a change in a property’s ownership and exemption status. Plaintiff, the AMA, a private, voluntary, not-for-profit organization purchased property in 1982 that was at that time classified as exempt, because it was owned by the City of Chicago.³¹ One year later, in 1983, the assessor eliminated the “exempt” status because of the change of ownership and fully assessed the property. Beginning with 1983 and for all subsequent years in which the AMA owned the property, the assessor fully assessed the property and the AMA paid all real estate taxes assessed and levied against it.³² In 1989, after 7 years elapsed, the assessor certified a 1982 back-tax assessment as omitted property, for the period in 1982 when the AMA first owned the property.³³ The AMA countered that argument, stating that if the property was still listed as exempt in 1982, the property could not then be

“omitted” within the meaning of the IPTC, thus rendering the back-tax assessment illegal. Defendant Rosewell argued that property which is transferred from a use exempt from taxation to a nonexempt use is made subject to taxation *from the date of purchase or covenant*.³⁴ The Illinois Appellate Court agreed and ruled in favor of Rosewell.

BACK TAX

The execution of this omitted assessment is by way of a back tax. Under the IPTC, no tax or interest for previous years will be charged against any property for years prior to the date of ownership of the person owning the property at the time the liability for the omitted tax was first determined.³⁵ Ownership in this context refers to bona fide legal and equitable titles or interests acquired for value and without notice of the tax, as may appear by deed, deed of trust, mortgage, certificate of purchase or sale, or other form of contract.³⁶

The back tax does not apply if three events take place. First, the property in question had to be last assessed as unimproved. Second, a proper 30 day notice was given by the property owner to the assessor of subsequent improvements, along with a requested reassessment. Third and finally, the assessor did not reassess the property within 16 months following the receipt of that notice from the property owner.³⁷ The applicable assessment authority will then notify the owner of property assessed under the IPTC.³⁸

No Statute of Limitations For Back Tax

Another important consideration is time. How far into the past can the assessing authority look to compel a property owner to pay for taxes that went unpaid? The IPTC does not give a specific time frame for this issue. The IPTC only discusses specific statute of limitations with respect to the collection of delinquent real estate taxes³⁹ and special assessments.⁴⁰ For example, if a property owner owes back taxes for a reason other than an administrative error, the tax lien has to attach within 20 years after the tax became delinquent, otherwise the tax lien will be discharged and released.⁴¹ In the case of special assessments, the time frame is 30 years. Interestingly, in the section that immediately follows, the IPTC opts out of assigning a time frame to omitted assessments. It only tells the reader that the preceding sections “do not apply to taxes which have been levied as provided in §16-135 [omitted assessments].”⁴² No further information is given as to a statute of limitations for omitted assessments.

Local Back Tax Policy

According to a general legal reference source,⁴³ there is no statute of limitations that runs against the state. Rather, the state has discretion to determine how far back they want to look to determine the tax liability of a property owner whose

property was subject to an omitted assessment.⁴⁴ The Cook County Tax Assessor's office follows a policy where they back tax residential properties for up to 4 years back in time, and commercial properties for up to 7 years in time.⁴⁵ Even though the tax roll is completed for the given year, the owners of the property subject to taxation should not assume that their assessment may not be modified or amended to their detriment.⁴⁶

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¹ The Illinois Property Tax System. Illinois Department of Revenue, at 5 (2002.)

² Id.

³ Id. at 6

⁴ Id. at 10

⁵ Id. at 14

⁶ 35 ILCS 200/9-180

⁷ Id.

⁸ Id.

⁹ Cook County, for example

¹⁰ In Cook County the Board of Review was formerly known as the Board of Appeals

¹¹ 35 ILCS 200/9-260 (a)

¹² Id.

¹³ The Illinois Property Tax System, at 6. "Generally everyone pays property taxes. Homeowners and owners of commercial, industrial, and agricultural property pay property tax directly."

¹⁴ 35 ILCS 200/9-260 (b)

¹⁵ 35 ILCS 200/21-25

¹⁶ 35 ILCS 200/9-260 (c)

¹⁷ 35 ILCS 200/16-50

¹⁸ 35 ILCS 200/9-265

¹⁹ The assessor can assess at his own initiative or when ordered to do so by the Board of appeals or Board of Review.

²⁰ 35 ILCS 200/9-265

²¹ 35 ILCS 200/9-265

²² 359 Ill. 143, 147 (1934)

²³ Id.

²⁴ 35 ILCS 200/9-265

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ 237 Ill. App. 3d 1097, 1098 (1992)

³¹ 35 ILCS 200/15-60, which states in pertinent part that "All property owned by any city or village located within its incorporated limits" is also exempt.

³² 237 Ill. App.3d 1097, 1099.

³³ Id. At 1100

³⁴ Id.

³⁵ 35 ILCS 200/9-270

³⁶ Id.

³⁷ 35 ILCS 200/9-260 and 35 ILCS 200/9-270

³⁸ 35 ILCS 200/9-270

³⁹ 35 ILCS 200/20-190 (a)

⁴⁰ 35 ILCS 200/20-190 (b)

⁴¹ 35 ILCS 200/20-190 (a)

⁴² 35 ILCS 200/20-135

⁴³ 72 Am. Jur. 2d State and Local Taxation §700

⁴⁴ Id.

⁴⁵ Cook County Assessor's Office

⁴⁶ 72 Am. Kir. 2d State and Local Taxation §700