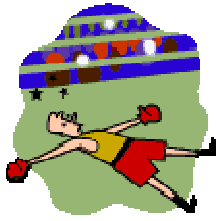


Taxpayer's Corner



By Joseph F. Locallo, Jr.

“It’s mine!” “No, it’s mine!” “No, it’s mine!” “No, it’s mine!” “No, it’s mine!”...

Lawsuits filed by property owners to refund overpayment of real estate taxes are arduously defended against by local government. The litigation is reminiscent of the playground of my youth. Two kids pulling onto a hat. One small, battered and exhausted from being pushed and pulled around by the other bigger one who manages to pull whose hat away?

The Illinois Supreme Court has recently remanded one such lawsuit back to the Circuit Court of Cook County for further consideration. Known as a Specific Objection Lawsuit, this forum once was an opportunity for a taxpayer *alone* to present evidence in a court of law to stop the Cook County Treasurer from taking too much of his money in the assessment of a real estate tax. Now, the City of Chicago and the Board of Education are allowed access to what once was a place of protection, solely for the property owner.

After paying all of the real estate taxes, on time and in full, a taxpayer can win an appeal in court if he can prove his property was over assessed. However, once paid into the County’s treasury a conversion of his money seems to occur. His money is considered the government’s money.

The City of Chicago and the Board of Education, two of Chicago’s tax levying bodies, intervened in selected Specific Objection cases wherein there was the greatest chances of diminishing their and the county’s tax base through potential refunds. In a Specific Objection Lawsuit, a judge can determine the assessed valuation on a property is excessive and reduce its assessment. This allows for a refunding of taxes already paid, plus statutory interest, back to the taxpayer. County government is defended by the Office of the Cook County State’s Attorney and it is the taxpayer’s burden to prove by clear and convincing evidence the assessment is wrong.

The Illinois Supreme Court has held that, in an assessment-valuation-objection lawsuit, a tax levying district may utilize the intervention mechanism provision 735 ILCS 5/2-408 to a proceeding under the Property Tax Code. *Madison Two Assocs. v. Pappas*, 227 Il. 2d 474, 478 (2008). The Court further held that the taxing districts have a legally cognizable interest and stake in the outcome of valuation-assessment cases. *Id.* @ 491-92.

On remand, the Trial Court reconsidered numerous arguments by the taxpayer that refunds did not adversely affect the function of government. Nevertheless, the Trial

Court determined that protecting the diminution of available money to fund government was, on balance, more important, and allowed intervention in Specific Objection Lawsuits. In an appeal process once afforded to the taxpayer alone access to the Circuit Court has now also been allowed to the taxing bodies in Specific Objection Lawsuits¹.

By opening the door of litigation to more parties, the taxpayer is additionally challenged. Although he must prove by clear and convincing evidence that the assessment on this property is over-valued to the satisfaction of the court, he must do so through the watchful eyes of the taxing bodies. The Office of the State's Attorney will retain the sole authority to try or settle a matter before the Trial Court but will have additional assistance. The playground is not a level one. Taxpayers, get a good grip on your hats.

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¹ On appeal before the Illinois Supreme Court is the question of who has the choice of forum, the taxpayer or the taxing bodies? The taxing bodies would like to proceed on appeals to the Illinois Property Tax Appeal Board (IPTAB); the taxpayer would like to proceed in the Circuit Court. Why? Because at the IPTAB an assessment can also be increased!