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12

Property Tax Appeal Litigation

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I. [12.1] Introduction**II. [12.2] Sources of Law**

A. [12.3] The Illinois Constitution

B. [12.4] The Property Tax Code

1. [12.5] Assessment Procedures

a. [12.6] Township Assessors

b. [12.7] Cook County Assessor

2. [12.8] Assessment Appeals

a. [12.9] Board of Review

b. [12.10] Property Tax Appeal Board and Circuit Court

(1) [12.11] PTAB

(2) [12.12] Circuit court

3. [12.13] Exemptions from Real Property Taxation

4. [12.14] Correcting Assessment Errors — Certificates of Error

C. [12.15] Summary of Sources of Law

III. [12.16] Working with an Appraiser**IV. [12.17] Conclusion****V. [12.18] Appendix — Recommended Resources**

I. [12.1] INTRODUCTION

This chapter provides an overview of the law governing property tax appeals with a focus on the panoply of rights and remedies available to property owners and units of local government in both challenging and defending the assessment of real property. The chapter also addresses one of the principal practical components of assessment litigation, namely, working with a real estate appraiser. The property tax is one of the two or three largest expenses of property ownership (after debt service), and for most units of local government it is the largest source of funding for governmental operations. Real property is assessed as of January 1 each year, which creates the opportunity to appeal a property assessment on an annual basis.

II. [12.2] SOURCES OF LAW

Property tax assessment litigation is governed almost exclusively by state law. The Illinois Constitution and the Illinois Property Tax Code (Code), 35 ILCS 200/1-1, *et seq.*, provide exceptional detail and guidance for real property taxation in Illinois. It should be noted that assessment litigation can give rise to equal protection claims under the Fourteenth Amendment to the United States Constitution. *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 336, 102 L.Ed.2d 688, 109 S.Ct. 633 (1989). However, the Tax Injunction Act (28 U.S.C. §1341) provides that “district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.” The effect of the Tax Injunction Act is that almost all assessment litigation is pursued under state law.

A. [12.3] The Illinois Constitution

Article IX, §4, of the Illinois Constitution, entitled “Real Property Taxation,” establishes the constitutional authority to assess and levy a tax on real property. This section provides as follows:

(a) Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law.

(b) Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county.

(c) Any depreciation in the value of real estate occasioned by a public easement may be deducted in assessing such property. ILL.CONST. art. IX, §4.

Of particular note, §4(a) establishes a requirement of uniformity of assessments and that the assessing authorities establish a value for real property. The uniformity provision “does not . . . call for a mathematical equality. . . . A practical uniformity, rather than an absolute one, is the test.” *Apex Motor Fuel Co. v. Barrett*, 20 Ill.2d 395, 169 N.E.2d 769, 773 (1960). Section 4(b) establishes the authority for classifying real property by type and setting forth what is commonly referred to as the “2½:1” requirement. This requirement has been the source of much litigation of late for real property in Cook County. See *Cook County Board of Review v. Property Tax Appeal Board*, 339 Ill.App.3d 529, 791 N.E.2d 8, 274 Ill.Dec. 212 (1st Dist. 2003) (Bosch Corporation); *Cook County Board of Review v. Property Tax Appeal Board*, 345 Ill.App.3d 539, 803 N.E.2d 55, 280 Ill.Dec. 825 (1st Dist. 2003) (Lurie Company).

B. [12.4] The Property Tax Code

The Property Tax Code sets forth the statutory law governing real property assessment and taxation. The Code establishes real property assessment procedures to be followed by local assessing officials, outlines the process to appeal assessments, defines those properties that are exempt from taxation, and provides a mechanism to correct assessment errors. These items are addressed in detail in §§12.5 – 12.14 below.

1. [12.5] Assessment Procedures

The Property Tax Code requires that real property be assessed as of January 1 of each year. 35 ILCS 200/9-155. In all counties that do not classify real property for tax purposes, all real property is assessed at 33⅓ percent of its “fair cash value.” 35 ILCS 200/1-55, 200/9-145. “Fair cash value” is defined as “[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller.” 35 ILCS 200/1-50. “Fair cash value” is synonymous with “fair market value” for property tax purposes. *Kankakee County Board of Review v. State of Illinois Property Tax Appeal Board*, 337 Ill.App.3d 1070, 787 N.E.2d 865, 272 Ill.Dec. 679 (3d Dist. 2003).

As mentioned in §12.3 above, Article IX, §4, of the Illinois Constitution allows counties with a population of more than 200,000 to classify real property for purposes of taxation. Cook County is the only county in Illinois that currently classifies real property for taxation purposes. Cook County uses the classification system to assess different property types at different percentages of fair cash value. For example, a single-family residential property in Cook County is assessed at 16 percent of its fair cash value, while a commercial property is assessed at 38 percent of its fair cash value. Cook County Real Property Assessment Classification Ordinance §3 (Feb. 15, 2006) (available online at www.cookcountyassessor.com/forms/ordinance2006.pdf). (For the codes that the Cook County Assessor uses when classifying real property for tax purposes, see www.cookcountyassessor.com/forms/classcode.pdf.) This variation in assessment levels allows the property tax burden to be shifted from homeowners to commercial property owners. The ability to redistribute the property tax burden is unavailable in counties that do not classify real property for taxation purposes and assess all property at 33⅓ percent of fair cash value.

The property tax assessment process begins with the local assessor's office. Each county in Illinois is divided into a number of townships. In counties other than Cook County, each township elects a township assessor to conduct the initial valuation of property. In Cook County, the county assessor is elected to value real property in all of the county's townships.

Whether it is the township or county assessor, the Code directs the assessor in general assessment years "in person or by deputy [to] actually view and determine as near as practicable the value of each property listed for taxation as of January 1 of that year. . . . The assessor or deputy shall set down, in the books furnished for that purpose the assessed valuation of properties in one column, the assessed value of improvements in another, and the total valuation in a separate column." 35 ILCS 200/9-155. In non-general assessment years, assessors "shall list and assess all property which becomes taxable and which is not upon the general assessment, and also make and return a list of all new or added buildings, structures or other improvements of any kind, the value of which had not been previously added to or included in the valuation of the property on which such improvements have been made." 35 ILCS 200/9-160. Assessors during non-general assessment years may also raise or lower assessments "to equalize assessments." 35 ILCS 200/9-205.

The details of what constitutes a general assessment year, how assessors assess property, and how assessors adjust assessments in non-general assessment years depend significantly on whether the property is located in Cook County. The general practices of township assessors are discussed in §12.6 below, followed by a discussion of the practices of the Cook County Assessor in §12.7.

a. [12.6] Township Assessors

The responsibilities of the township assessor vary depending on whether the tax year in question is a general assessment year. The Property Tax Code defines a "general assessment year" for counties with less than 3 million inhabitants (*i.e.*, all counties other than Cook County) as tax year 1995 "and every fourth year thereafter." 35 ILCS 200/9-215. It is worth noting that "[i]n counties having the commission form of government and less than 3,000,000 inhabitants, the general assessment years shall be 1994 and every fourth year thereafter." *Id.* In addition, counties may divide their territory into four assessment districts so that one district is generally assessed every year rather than the whole county being generally assessed once every four years. *Id.*; 35 ILCS 200/9-220, 200/9-225.

During a general assessment year, the township assessor will review all property within the township, determine the value of each parcel of real estate within the township, and assess each parcel "at 33¹/₃% of its fair cash value" (which is synonymous with "fair market value"). 35 ILCS 200/9-155. In non-general assessment years, the county supervisor of assessments, who is responsible for equalizing assessments among all the townships within a county, derives and applies to all assessments an "equalization factor" that is designed to keep the assessments for all property within the township at 33¹/₃ percent. 35 ILCS 200/9-210. The township assessor's duty during non-general assessment years is to value new properties that are not yet on the assessment rolls and to adjust assessments for properties valued during the general assessment year to

equalize assessments when appropriate. 35 ILCS 200/9-205. Whether or not the tax year is a general assessment year, the assessments for each tax year must be completed on or before June 1. 35 ILCS 200/9-155, 200/9-160.

The township assessor typically begins the assessment process in spring of each year. If a property owner is concerned about his or her property assessment, the property owner may schedule a meeting with the township assessor's office to discuss the assessment of his or her property during the assessment process. On or before June 1 of each year, the assessor will certify the assessments for the applicable tax year to the county supervisor of assessments, who also serves as the clerk of the board of review. 35 ILCS 200/3-30.

b. [12.7] Cook County Assessor

Unlike township assessors, the duties of the Cook County Assessor do not vary from year to year because every year is a general assessment year in Cook County. The county is divided into three assessment districts: (1) the City of Chicago; (2) that portion of the county outside of the City of Chicago and north of Illinois Route 64 (North Avenue); and (3) that portion of the county outside of the City of Chicago and south of Illinois Route 64 (North Avenue). 35 ILCS 200/9-220. Each assessment district is subject to a general assessment every three years so that one district is reassessed each year. As the Cook County Assessor is responsible for the valuation of all property in the county, the Assessor is engaged in general assessment activities in one assessment district and non-general assessment activities in the other two assessment districts every year.

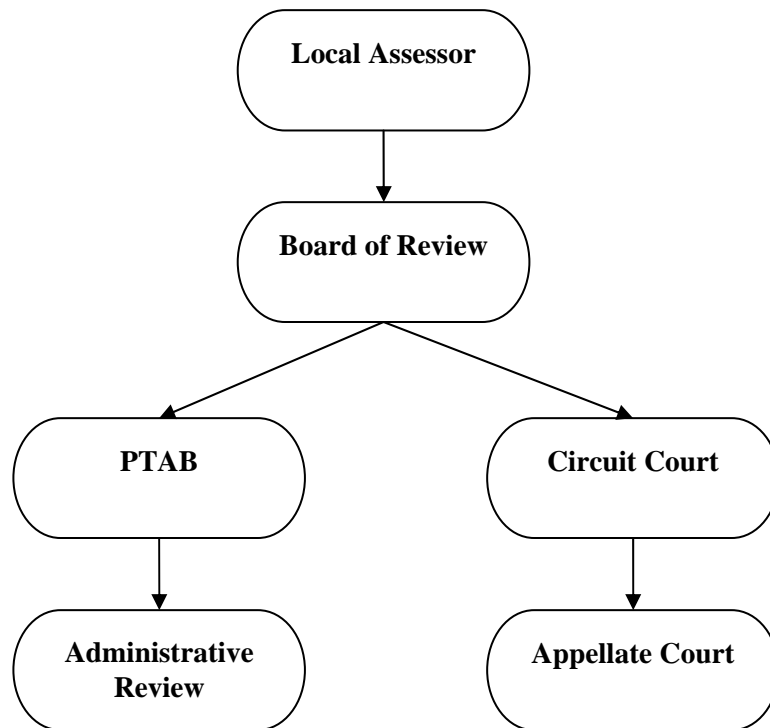
Similar to township assessors, the Cook County Assessor performing a general assessment is charged with “actually view[ing] and determin[ing] as near as practicable the [fair cash] value of each property listed for taxation as of January 1 of [the general assessment] year.” 35 ILCS 200/9-155. However, not all property in Cook County is assessed at the same percentage of fair cash value (called the “level of assessment”). As discussed in §12.5 above, the Cook County Real Property Assessment Classification Ordinance provides that properties are assessed at varying levels of assessment ranging from 16 percent – 38 percent based on property use. Cook County Real Property Assessment Classification Ordinance §§2, 3 (Feb. 15, 2006). Furthermore, the Cook County Assessor is not required to complete assessments by a statutory deadline. The Property Tax Code provides that the Cook County Assessor must complete assessments “as soon as he or she reasonably can.” 35 ILCS 200/9-155.

The Cook County Assessor's non-general assessment year duties, like those of the township assessors, include valuing new properties that are not yet on the assessment rolls and adjusting assessments for properties valued during the general assessment year to equalize assessments when appropriate. 35 ILCS 200/9-205. However, while supervisors of assessments in other counties apply an equalization factor to all assessments during non-general assessment years (thus altering the assessments for all properties in a county on an annual basis), most assessments in Cook County remain static during non-general assessment years. Again, the Assessor has no definitive deadline by which to complete assessments for non-general assessment years. 35 ILCS 200/9-160.

The Cook County Assessor's assessment process is more formal than that of the township assessors. The Cook County assessor typically launches the general assessment process in summer or fall of each year by sending a letter to all property owners in the district under reassessment advising them of the proposed assessment for their property. A property owner concerned about his or her assessment is given an opportunity to file an appeal with the Cook County Assessor's Office. 35 ILCS 200/14-35. Appeals are considered for each township in Cook County. As the appeals process is completed for each township, the Assessor certifies the assessment for the applicable township and tax year to the Cook County Board of Review. *Id.*

2. [12.8] Assessment Appeals

The requirement that property be assessed as of January 1 of each year appears deceptively simple. However, the process for establishing real property assessments does not stop with the assessor's office. This process contains many layers and can require years of litigation before a final assessment is determined. Those dissatisfied with the assessor's assessment may appeal that assessment to an entity called the "board of review." An assessment may then be appealed to either an administrative agency called the "Property Tax Appeal Board" (PTAB) or directly to the circuit courts. The decisions of either of these bodies may then be appealed either through the administrative review process or through direct appeal to the appellate court. The chart below shows the structure of this process.



Each step in the assessment litigation process has important features that are discussed in §§12.9 – 12.12 below.

a. [12.9] *Board of Review*

Each county has a board of review, which is charged with hearing and deciding appeals of property assessments based on property owners' complaints of overvaluation and taxing districts' complaints of undervaluation. 35 ILCS 200/16-25, 200/16-30, 200/16-95. In addition, boards of review, on their own motion, may revise any assessment provided that the assessment may be increased only if the property owner is given notice of the proposed increase and an opportunity to be heard. 35 ILCS 200/16-30, 200/16-95. In all cases, the board sets assessments as appears to it to seem just. 35 ILCS 200/16-30, 200/16-95. Boards of review provide notice of their decisions.

Boards of review outside of Cook County are typically comprised of three members who are appointed by the county board. 35 ILCS 200/6-5. These boards of review convene on or before June 1 of each year and must adjourn no later than December 31. 35 ILCS 200/16-30. The precise adjournment date for a board of review depends on the population of its county. A board in a county with less than 50,000 inhabitants must adjourn on or before September 7; one in a county with 50,000 – 74,999 inhabitants on or before October 7; one in a county with 75,000 – 99,999 inhabitants on or before November 7; and one in a county with 100,000 or more inhabitants on or before December 31. 35 ILCS 200/16-35. During the board of review's annual session, it considers all written overvaluation and undervaluation complaints. 35 ILCS 200/16-55. In addition, the boards of review provide notice to affected taxing districts of "all cases where a change in assessed valuation of \$100,000 or more is sought." *Id.* In these cases, taxing districts have a right "to be heard on the complaint." *Id.* Once a board of review outside of Cook County completes its work, it must deliver certified copies of the assessment books to the county clerk and the chief county assessment officer (whether the county assessor or the county supervisor of assessments). 35 ILCS 200/16-90.

The three members of the Cook County Board of Review are elected to alternating terms of two and four years. 35 ILCS 200/5-5(c). The Cook County Board of Review convenes annually on the second Monday in September (35 ILCS 200/16-105) and adjourns "60 days after the date of the last delivery to it of the assessment books for any township or taxing district" (35 ILCS 200/16-150). The Cook County Board of Review reviews assessments by township. 35 ILCS 200/16-125. As the Board of Review completes its review of each township, the Board transmits its decisions to the Cook County Assessor. *Id.* Unlike other boards of review, the Cook County Board of Review is not required to give notice of any complaints to the affected taxing districts. At the end of the review cycle, the Cook County Board of Review orders the Assessor to make those changes found by the Board of Review to be just. 35 ILCS 200/16-150. The Board of Review and the Assessor jointly file certified assessment books with the Cook County Clerk. *Id.*

b. [12.10] *Property Tax Appeal Board and Circuit Court*

All property taxes are calculated and paid based on the assessments established by the boards of review. A property owner dissatisfied with a decision of a board of review may appeal such a decision to the Property Tax Appeal Board or may file a tax objection complaint in the county circuit court. 35 ILCS 200/16-160, 200/23-5. Dissatisfied taxing districts are limited to appealing decisions of boards of review to the PTAB. See 35 ILCS 200/16-160, 200/23-5. Any party seeking to invoke the jurisdiction of either the PTAB or the circuit court must first have filed a

complaint before the appropriate board of review and have appeared before the board for any hearing. 35 ILCS 200/16-160, 200/23-10. The extension and collection of real estate taxes is not delayed by assessment appeal proceedings before either the PTAB or the circuit court. 35 ILCS 200/16-180, 200/23-5. When an assessment is reduced by the PTAB or the circuit court, the party seeking the reduction is awarded a property tax refund with statutory interest. 35 ILCS 200/16-185, 200/23-15, 200/23-20.

(1) [12.11] PTAB

The Property Tax Appeal Board is charged with hearing assessment appeals from the various boards of review and determining correct assessments. *LaSalle Partners, Inc. v. Illinois Property Tax Appeal Board*, 269 Ill.App.3d 621, 646 N.E.2d 935, 940 – 941, 207 Ill.Dec. 101 (2d Dist. 1995). The PTAB hears all appeals de novo, meaning that parties may submit to the PTAB evidence not previously submitted to or considered by a board of review. 35 ILCS 200/16-180. The PTAB also is not bound to give any deference to the decision of the board of review.

Parties appealing a decision of a board of review to the PTAB must file the appropriate petition form “within 30 days after the date of written notice of the decision of the board of review.” 35 ILCS 200/16-160. The petition must set “forth the facts upon which [the party] bases the objection, together with a statement of the contentions of law which [the party] desires to raise, and the relief requested.” *Id.* Each appeal is “limited to the grounds listed in the petition filed with the Property Tax Appeal Board” (35 ILCS 200/16-180), and amendments are allowed only to correct technical defects (86 Ill.Admin. Code §1910.31(a)). No amendments to the petition form that are prejudicial to a party are permitted. *Id.*

Once a party’s filing is accepted by the PTAB, the Clerk of the PTAB mails a copy of the filing to the local board of review. 35 ILCS 200/16-180. In those cases in which a party seeks an assessment reduction of \$100,000 or more, the board of review serves a copy of the party’s petition on “on all taxing districts as shown on the last available tax bill.” *Id.* Once a taxing district receives notice of such a petition, that district may intervene in the assessment appeal before the PTAB by filing a request to intervene within 30 days of the postmark of the board of review’s notice of the petition. 86 Ill.Admin. Code. §1910.60(d).

The PTAB reviews all cases according to an informal procedure that “eliminate[s] formal rules of pleading, practice and evidence” (35 ILCS 200/16-180) and decides cases “based upon equity and the weight of evidence” (35 ILCS 200/16-185). The party challenging an assessment bears the burden of going forward and the burden of proof. 86 Ill.Admin. Code §1910.63(b). When an assessment is challenged at the PTAB based on market value, “the value of the subject property must be proved by a preponderance of the evidence.” 86 Ill.Admin. Code §1910.63(e). When a party alleges that it received unequal treatment in the assessment process (*e.g.*, a claim that an assessment is nonuniform), “the inequity of assessments must be proved by clear and convincing evidence.” *Id.*

If a party successfully demonstrates that its property is overvalued, that party may be able to file what is commonly referred to as a “roll-over appeal.” Essentially, a roll-over appeal is an option for a party when the PTAB “renders a decision lowering the assessment of a particular

parcel after the deadline for filing complaints with the board of review . . . or after adjournment of the session of the board of review . . . at which assessments for the subsequent year are being considered.” 35 ILCS 200/16-185. Under these circumstances, a party may “appeal the assessment for the subsequent year directly to the [PTAB]” by filing a written notice with the PTAB within 30 days of the PTAB’s decision. *Id.*

A party dissatisfied with a decision of the PTAB may appeal the decision under the Administrative Review Law, 735 ILCS 5/3-101, *et seq.*, to the Illinois courts. On administrative review, the court reviews “all questions of law and fact presented by the entire record before the court.” 735 ILCS 5/3-110. However, the court may consider “[n]o new or additional evidence in support of or in opposition to any finding, order, determination or decision of the [PTAB].” *Id.* While questions of law are reviewed by the courts *de novo*, “[t]he findings and conclusions of the [PTAB] on questions of fact shall be held to be prima facie true and correct.” *Id.*

The venue for administrative review of a PTAB decision varies depending on the change in assessed value that was sought. While all decisions from other administrative agencies are typically appealed to the circuit court (735 ILCS 5/3-104), those cases in which a change in assessed value of \$300,000 or more was sought are appealed directly to the Illinois appellate court (35 ILCS 200/16-195).

(2) [12.12] Circuit court

A property owner has the option to appeal the decision of the board of review directly to the circuit court. 35 ILCS 200/23-15. Assessment complaints filed directly with the circuit court are called “tax objection complaints.” The Property Tax Code recognizes two types of tax objection complaints: the first concern the assessment of individual parcels of real estate, and the second concern objections to a taxing district’s authority to levy property taxes and are commonly called “tax rate objections.” This chapter addresses only those tax objection complaints involving assessments. Tax rate objections are beyond the scope of this chapter.

In tax objection complaints, the court (without a jury) hears and determines assessment objections. 35 ILCS 200/23-15(b)(1). Unlike the Property Tax Appeal Board, the court presumes that assessments are correct and legal. 35 ILCS 200/23-15(b)(2). However, this presumption may be rebutted if the property owner proves a different assessment by clear and convincing evidence. *Id.* In addition, courts hear tax objection complaints *de novo* and “without regard to the correctness of any practice, procedure, or method of valuation followed by the assessor . . . or board of review in making or reviewing the assessment.” 35 ILCS 200/23-15(b)(3).

A property owner wishing to file a tax objection complaint must first timely pay all property tax due. 35 ILCS 200/23-5. Once a property owner timely pays its taxes, it may file a tax objection complaint to challenge the assessment on which its taxes were calculated. *Id.* In Cook County, such a complaint must be filed within 165 days (or approximately 5½ months) “after the first penalty date of the final installment of taxes for the year in question.” 35 ILCS 200/23-10. In all other counties, a property owner must file a tax objection complaint “within 75 days after the first penalty date of the final installment of taxes for the year in question.” 35 ILCS 200/23-10.

A tax objection complaint names the county collector as defendant and specifies the objections raised by the property owner. 35 ILCS 200/23-15(a). The collector is not required to file an appearance or answer in response to the tax objection complaint. *Id.* Unlike PTAB appeals, tax objection cases are subject to the more formal rules of civil procedure, including discovery. See Cook County Circuit Court Rule 10.8, §2-120. Another distinction between PTAB appeals and tax objection complaints is that taxing districts do not typically receive notice of tax objection complaints. (While §23-10 of the Code suggests that taxing districts located outside of Cook County receive notice of tax objection complaints from the clerk of the circuit court, tax objection complaints are relatively scarce outside of Cook County, and therefore this portion of §23-10 is rarely applicable.) The issue of whether taxing districts may intervene in tax objection complaint litigation has been addressed by the First District Appellate Court in *Madison Two Associates v. Pappas*, 371 Ill.App.3d 352, 862 N.E.2d 1184, 308 Ill.Dec. 981 (1st Dist.), *appeal granted*, 224 Ill.2d 577 (2007), and is currently being litigated before the Illinois Supreme Court.

A party dissatisfied with a decision of the circuit court may appeal the decision, as all other circuit court decisions, under the Supreme Court Rules.

3. [12.13] Exemptions from Real Property Taxation

Exemption from property taxation is derived from the Illinois Constitution. Article IX, §6, of the Constitution empowers the General Assembly to “exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. The General Assembly by law may grant homestead exemptions or rent credits.” The Property Tax Code specifies numerous exemptions in Article 15. See 35 ILCS 200/15-35 through 15-185. It is important to note that the courts construe exemption statutes very narrowly. The property owner bears the burden of showing that its property falls squarely within a statutory exemption. *Metropolitan Water Reclamation District of Greater Chicago v. Department of Revenue of State of Illinois*, 313 Ill.App.3d 469, 729 N.E.2d 924, 246 Ill.Dec. 273 (1st Dist. 2000). In the event there is doubt as to the applicability of an exemption statute, the doubt will be resolved in favor of taxation.

To apply for an exemption for the first time (other than a homestead exemption), a property owner must file an application with the county board of review when the board is in session. 35 ILCS 200/15-5. In cases in which the exemption sought would reduce the assessed valuation by more than \$100,000, the property owner must serve a copy of the exemption application on “any municipality, school district, community college district, and fire protection district in which the property is situated.” 35 ILCS 200/16-70. (But note that in Cook County, the exemption application need not be served on a fire protection district under 35 ILCS 200/16-130.) While such taxing districts are entitled to an opportunity to be heard by the board of review concerning exemption applications, the failure of taxing districts to receive notice of such applications does not invalidate any exemption. 35 ILCS 200/16-70, 200/16-130.

The board of review does not grant or deny exemption applications. The board of review gathers evidence regarding the exemption application and makes a recommendation to the Illinois

Department of Revenue as to whether the application should be granted or denied. 35 ILCS 200/16-70, 200/16-130. The Department of Revenue will then review the evidence given to the board of review to determine whether the property tax exemption applies. 35 ILCS 200/8-35.

A party dissatisfied with the decision of the Department of Revenue may file an application for a hearing before the Department. 35 ILCS 200/8-35(b). The applicant for a hearing must “state concisely the mistakes alleged to have been made or the new evidence to be presented.” *Id.* Upon the filing of a petition for a hearing, the Department of Revenue will reconsider the exemption application, provide a hearing, and issue a written decision. A party dissatisfied with the Department’s written decision may file a written request for a rehearing. *Id.*

The final decision of the Department of Revenue is subject to the Administrative Review Law. However, a party may not appeal a determination by the Department of Revenue “unless the party commencing the action has filed an application for a hearing and the Department has acted upon the application.” *Id.*

4. [12.14] Correcting Assessment Errors — Certificates of Error

A “certificate of error” is a written acknowledgement that a mistake or error in an assessment has occurred. Typically, certificates of error are issued for properties that were recently declared exempt because property owners who seek an exemption for their property must continue to pay property taxes until the exemption is granted. See 35 ILCS 200/14-25. In counties outside of Cook County, certificates of error are issued upon the application of the property owner to the board of review, or upon the board’s own motion, and must be endorsed by the county’s chief assessment official. 35 ILCS 200/14-20, 200/16-75. In Cook County, certificates of error are initiated by the County Assessor and endorsed by the Board of Review. 35 ILCS 200/14-10, 200/14-15. A party seeking a certificate of error due to a claim for exemption may seek such a certificate for the three tax years preceding the year in which the certificate is sought. 35 ILCS 200/14-25.

C. [12.15] Summary of Sources of Law

Property tax assessment litigation is governed almost exclusively by state law. In Illinois, the state Constitution and the Property Tax Code provide exhaustive guidance for assessment procedures, assessment appeals, property tax exemptions, and correcting assessment errors. However, the Code does not answer the single most important question in assessment litigation, “What is the fair cash value of real property as of January 1 of each year?” That answer is left to the judgment of the local assessors, the boards of review, the Property Tax Appeal Board, and the circuit courts. Each of these entities relies on real estate market data to answer the ultimate question of property value. When attorneys appear before each of these entities, they normally use expert appraisal evidence and testimony to inform the judgment of these entities. Therefore, an attorney’s ability to effectively work with a real estate appraiser is an integral part of the assessment litigation process. See §12.16 below.

III. [12.16] WORKING WITH AN APPRAISER

The ultimate question in nearly all assessment litigation is “What is the fair cash value of the subject property?” From the very beginning of the assessment process, attorneys rely on appraisers to provide the data and analysis necessary to support a valuation of a property as well as information to challenge the valuation conclusion of another party. Attorneys rely on appraisers not only to provide appraisal reports and expert testimony, but also to guide them through the complicated world of real estate valuation. It is important that an attorney choose his or her appraisal expert with care and continually work to develop a good working relationship with the appraiser. These goals are best accomplished by having a firm understanding of the services that an appraiser can provide.

Real estate appraisers provide far more than appraisal reports. While appraisal reports often constitute the primary evidence in valuation litigation, it is hardly the only evidence that an appraiser can develop. Instead, an attorney should consult with an appraiser to obtain crucial information that guides the attorney through each step of valuation litigation.

Typically, the first interaction between an attorney and an appraiser in the course of valuation litigation should be for the purpose of obtaining a preliminary opinion of value. If the ultimate question is “what is the fair cash value of the property,” the attorney’s first order of business is to ascertain a preliminary answer to this vital question without incurring significant costs. The attorney needs to know at the earliest possible moment whether a claim has validity. An appraiser can provide a preliminary valuation at a fraction of the cost of an appraisal report, and many appraisers will roll their fees for a preliminary valuation into the fees for a complete appraisal report if such a report is requested at a later time. The preliminary valuation is usually expressed as a value range, relies on general market information, and may reveal major issues at the earliest stages of litigation. The preliminary valuation route is particularly useful for attorneys defending assessment litigation as these attorneys usually have an appraisal report from the opposing party before they engage an appraiser.

If an attorney receives a preliminary valuation that suggests that litigation should proceed, the attorney should resist the reflex merely to order a full appraisal report. Appraisers can select and provide relevant real estate market data, including comparable sales and rents and data from publications used by real estate brokers and leasing agents in doing real estate transactions, and provide insight into appraisal methodologies. The attorney should analyze the case and determine what type of evidence is needed to successfully pursue the litigation. It may be that comparable sales data is sufficient evidence of value. Or it may be that exploiting a significant methodological flaw in an opponent’s evidence is enough to effectively defend a case. There are many types of evidence, short of an appraisal report, available for use in valuation litigation.

Once the decision is made to commission an appraiser to prepare an appraisal report, the attorney should not expect to simply await the final product. Whenever possible, the attorney should provide to the appraiser access to the property he or she is valuing and all pertinent information and documentation about that property. The appraiser will provide guidance about what he or she needs to review in the course of valuing the property. It is also important to

maintain contact with the appraiser throughout the appraisal process. Adverse facts about the property may emerge that will force the attorney to reevaluate the merits of pursuing the litigation further. It is better to learn about such facts before a costly final appraisal report is complete.

In addition to providing an appraisal report valuing a particular property, appraisers also provide technical assistance in rebutting an opponent's appraisal evidence. This assistance may include a report called a "technical appraisal review report." However, similarly to valuation services, appraisers can provide the market data or appraisal methodological information to effectively challenge an opponent's valuation report without completing a written report. In the event the attorney elects to have a written report prepared, it is advisable to select a separate appraisal expert to prepare the review and to direct the separate expert not to prepare an opinion of value. In the event a case goes to hearing or to trial, it is better to have one witness testify as to the value of the property and another witness testify concerning the deficiencies of the opponent's appraisal evidence.

Finally, when a valuation case is scheduled for trial or an administrative hearing, it is critical to carefully prepare the appraisal expert for testimony. Some appraisers have been testifying as experts longer than many attorneys have been litigating, and these appraisers may have definitive ideas about what questions should be asked and how they should be answered. The attorney should welcome advice from the experts but should never surrender the attorney's role in developing the theory of his or her case.

By understanding the services that an appraiser can provide, the attorney is able to effectively and efficiently bring the appraiser's expertise to bear on valuation litigation. An attorney who works closely with his or her appraisal expert will receive invaluable guidance from the appraiser, will avoid surprises, and will receive appraisal evidence that the attorney understands and will be able to use with maximum effectiveness.

IV. [12.17] CONCLUSION

Property tax appeal litigation requires a practitioner to have a firm understanding of Illinois property tax law and the ability to work effectively with real estate appraisers. The practitioner must keep the sequence and timing of the assessment process in the forefront of his or her mind and understand the role of each of the agencies with which he or she will interact. These skills will allow the practitioner to effectively litigate in the fast-paced and fluid field of property tax assessments.

V. [12.18] APPENDIX — RECOMMENDED RESOURCES

We recommend the following Internet resources for use by an assessment litigation practitioner:

Local Assessing Officials

Cook County Assessor's Office — www.cookcountyassessor.com

DuPage County Supervisor of Assessments — www.dupageco.org/soa

Kane County Chief County Assessment Office — www.co.kane.il.us/soa

Will County Supervisor of Assessments — www.willcountysoa.com

Boards of Review

Cook County — www.cookcountyboardofreview.com

DuPage County — www.dupageco.org/soa/generic.cfm?doc_id=346

Kane County — www.co.kane.il.us/soa/bor.htm

Lake County — www.co.lake.il.us/boardofreview

McHenry County — www.co.mchenry.il.us/common/countydpt/assess/assmtbor.asp

Illinois Property Tax Appeal Board — www.state.il.us/agency/ptab

We also recommend the following print sources:

Appraisal Institute, *THE APPRAISAL OF REAL ESTATE* (12th ed. 2001).

Appraisal Institute, *DICTIONARY OF REAL ESTATE APPRAISAL* (4th ed. 2002).

12S

Property Tax Appeal Litigation

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II. [12S.2] Sources of Law

B. The Property Tax Code

1. [12S.5] Assessment Procedures
2. Assessment Appeals
 - b. [12S.10] Property Tax Appeal Board and Circuit Court
 - (1) [12S.11] PTAB
 - (2) [12S.12] Circuit court
3. [12S.13] Exemptions from Real Property Taxation
4. [12S.14] Correcting Assessment Errors — Certificates of Error

III. [12S.16] Working with an Appraiser

II. SOURCES OF LAW

B. The Property Tax Code

1. [12S.5] Assessment Procedures

The second paragraph is replaced:

As mentioned in §12.3 above, Article IX, §4, of the Illinois Constitution allows counties with a population of more than 200,000 to classify real property for purposes of taxation. Cook County is the only county in Illinois that currently classifies real property for taxation purposes. Cook County uses the classification system to assess different property types at different percentages of fair cash value. The Cook County Board of Commissioners adopted significant amendments to the Cook County Real Property Assessment Classification Ordinance beginning with the 2009 assessment year. Ordinance No. 08-O-51 (Sept. 17, 2008). By 2011, assessments in Cook County will be either 10 percent or 25 percent of the fair cash value of the property. Cook County Code of Ordinances §74-64. The following chart details the new and old levels of assessment:

Class	Property Type	New Level of Assessment (%)	Old Level of Assessment (%)
1	Vacant Land	10	22
2	Residential	10	16
3	Apartments	16 (2009) 13 (2010) 10 (2011)	20
4	Nonprofit	25	30
5A	Commercial	25	38
5B	Industrial	25	36
Incentives	Various	10	16

The ability to redistribute the property tax burden via assessment classification is unavailable in counties that do not classify real property for taxation purposes and assess all property at 33¹/₃ percent of fair cash value.

2. Assessment Appeals

b. [12S.10] Property Tax Appeal Board and Circuit Court

Add at the end of the section:

Prior to January 1, 2006, the statutory interest rate added to property tax refunds was 5 percent per year. Effective January 1, 2006, P.A. 94-558 amended §23-20 of the Property Tax Code. P.A. 94-558 changed the rate of interest on property tax refunds from 5 percent per annum to “the annual rate of the lesser of (i) 5% or (ii) the percentage increase in the Consumer Price Index For All Urban Consumers during the 12-month calendar year preceding the levy year for

which the refund was made, as published by the federal Bureau of Labor Statistics.” 35 ILCS 200/23-20. The Cook County Treasurer interpreted the amended statute to apply retroactively so that all interest would be calculated using the CPI rate — for interest earned both before and after January 1, 2006. Taxpayers receiving refunds with interest calculated in this manner took the position that interest should be calculated at 5 percent for any objection filed before January 1, 2006, arguing they had a vested right in the higher interest rate. The appellate court ruled that the amendment to §23-20 should be applied prospectively. *General Motors Corp. v. Pappas*, 393 Ill.App.3d 60, 911 N.E.2d 504, 331 Ill.Dec. 683 (1st Dist.), *appeal granted*, 234 Ill.2d 520 (2009). Therefore, according to the appellate court, interest earned up to January 1, 2006, should be at the 5-percent rate provided for prior to the statutory amendment, and interest earned after the effective date should be calculated using the CPI rate. The issue is currently before the Illinois Supreme Court.

(1) [12S.11] PTAB

Add at the end of the third paragraph:

When a taxing district intervenes and a taxpayer’s appeal has prevented the taxing district from filing its own appeal, a taxpayer may not voluntarily dismiss an appeal it filed before the intervening taxing district has had the opportunity to submit evidence, provided that the intervening taxing district is in the process of securing evidence. *Minooka Community High School District No. 111 v. Illinois Property Tax Appeal Board*, 397 Ill.App.3d 823, 925 N.E.2d 1199, 339 Ill.Dec. 78 (3d Dist. 2010).

(2) [12S.12] Circuit court

The last two sentences in the first paragraph are replaced:

Tax rate objections must be filed by individual taxpayers but may be consolidated for administrative purposes. Class action lawsuits challenging tax rates are specifically prohibited by the Property Tax Code. 35 ILCS 200/23-15. Further, the doctrine of representation may not be used to entitle all taxpayers to a refund if an objection is upheld. *In re Objection to 2005 Tax Levy of LaSalle County, Illinois*, 393 Ill.App.3d 999, 914 N.E.2d 1139, 333 Ill.Dec. 327 (3d Dist. 2009). Tax objection complaints challenging the assessment of a property are not subject to class action certification since the facts are unique to the individual property in question. When the proceeding is a postjudgment proceeding involving a single question of law, such as the county treasurer’s interpretation of the interest rate applicable to the refunds resulting from a tax objection complaint, class action certification may be appropriate when the usual requirements for such certification are met. *Fakhoury v. Pappas*, 395 Ill.App.3d 302, 916 N.E.2d 1161, 334 Ill.Dec. 273 (1st Dist. 2009).

The last sentence in the first paragraph on p. 12-11 is replaced:

A taxing district may intervene in tax objection complaint litigation as long as it demonstrates in its petition to intervene that the requirements for intervention in §2-408 of the Code of Civil Procedure, 735 ILCS 5/2-408, are met. *Madison Two Associates v. Pappas*, 227 Ill.2d 474, 884 N.E.2d 142, 318 Ill.Dec. 587 (2008).

3. [12S.13] Exemptions from Real Property Taxation

Add at the end of the section:

Several court decisions have addressed limits of a property tax exemption. In *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill.2d 368, 925 N.E.2d 1131, 339 Ill.Dec. 10 (2010), the Illinois Supreme Court reviewed the charitable property tax exemption application of a hospital. The court reaffirmed the long-standing test for charitable property tax exemptions first articulated in *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149, 233 N.E.2d 537 (1968). As expressed in *Provena Covenant Medical Center*, the test consists of the following factors an organization owning property must meet in order to qualify for a charitable property tax exemption:

- a. It has no capital, capital stock, or shareholders.
- b. It earns no profits or dividends, but rather derives its funds mainly from private and public charity and holds them in trust for the purposes expressed in the charter.
- c. It dispenses charity to all who need it and apply for it.
- d. It does not provide gain or profit in a private sense to any person connected with it.
- e. It does not place any obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses. 925 N.E.2d at 1145.

The court found that an exemption was unwarranted because the hospital failed to meet its burden of proof with regard to factors b, c, and e.

Two cases also address the allowable uses of exempt property owned by a taxing district. The First District Illinois Appellate Court addressed the distinction between a taxable leasehold interest and a nontaxable license of exempt property in *Millennium Park Joint Venture, LLC v. Houlihan*, 393 Ill.App.3d 13, 911 N.E.2d 517, 331 Ill.Dec. 696 (1st Dist.), *appeal granted*, 234 Ill.2d 525 (2009), which is currently pending before the Illinois Supreme Court. The Fourth District Appellate Court addressed the provision of the Property Tax Code exempting property owned by a school district that is not “leased or otherwise used with a view to a profit.” 35 ILCS 200/15-35, 200/15-135. The court held that when a lease of school district property results in a substantial profit to the school district, the Department of Revenue may properly deny an exemption. *Springfield School District No. 186 v. Department of Revenue*, 384 Ill.App.3d 715, 893 N.E.2d 1042, 323 Ill.Dec. 568 (4th Dist. 2008).

4. [12S.14] Correcting Assessment Errors — Certificates of Error

Add at the end of the paragraph:

A taxpayer is also entitled to 0.5 percent interest per month on a refund resulting from a certificate of error. 35 ILCS 200/20-178. The interest is to be calculated starting 60 days after the

certificate of error is issued by the chief county assessment official. *Sears Holdings Corp. v. Pappas*, 391 Ill.App.3d 147, 908 N.E.2d 556, 330 Ill.Dec. 368 (1st Dist. 2009).

III. [12S.16] WORKING WITH AN APPRAISER

Add at the end of the carryover paragraph at the top of p. 12-14:

Finally, it is important to ensure that the appraiser completes a final report that conforms to the expectations set by Illinois courts. For example, the First District Illinois Appellate Court has ruled that a taxpayer's appraisal that failed to include a sales comparison approach despite the existence of comparable sales was insufficient as a matter of law. *Cook County Board of Review v. Illinois Property Tax Appeal Board*, 384 Ill.App.3d 472, 894 N.E.2d 400, 323 Ill.Dec. 633 (1st Dist. 2008).