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12S

Property Tax Appeal Litigation

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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).