ILLINOIS TAX FACTS

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# HOMESTEAD EXEMPTIONS: CONFUSING, COMPLICATED AND COSTLY

**By Kara Moretto**

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It is an understatement to say that property taxes – one of the most despised taxes – aggravate voters. Illinois property taxes are high and consistently are in the top five when states are ranked according to tax burden – the amount of taxes paid as a percentage of home value. A report published by the Urban-Brookings Tax Policy Center in 2013[1] indicates that, in 2012, Illinois ranked second in the nation for owner-occupied housing property tax burden. This fact is especially troublesome in a time of declining market values, perhaps loss of or no increase in household income, and taxing districts' increased costs to provide services (or inability to reduce budgets).

Why are Illinois' property taxes so high? In part, because Illinois has more taxing districts than any other state[2] (approximately 7,000; or 1,200 more than Pennsylvania, which is second). And, Illinois relies heavily on property

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| PROPERTY TAXES BY STATE | | | | | |
|---|---|---|---|---|---|
| | | Property Tax as a Percent of Home Value | | Property Taxes Paid (Dollars) | |
| **State** | **Rank** | **2012** | **2007-2011** | **2012** | **2007-2011** |
| | | Mean | Mean | Mean | Mean |
| New Jersey | 1 | 2.32 | 1.97 | $7,318 | $6,883 |
| **ILLINOIS** | **2** | **2.28** | **1.80** | **$4,469** | **$4,052** |
| New Hampshire | 3 | 2.18 | 1.93 | $5,230 | $4,918 |
| Wisconsin | 4 | 2.07 | 1.93 | $3,530 | $3,445 |
| Michigan | 5 | 2.06 | 1.81 | $2,347 | $2,539 |
| Iowa | 13 | 1.60 | 1.48 | $2,398 | $2,143 |
| Missouri | 22 | 1.19 | 1.11 | $1,767 | $1,704 |
| Indiana | 30 | 0.93 | 1.01 | $1,200 | $1,315 |
| Kentucky | 31 | 0.92 | 0.87 | $1,339 | $1,252 |

Source: Tax Policy Center

taxes to fund our public schools; more than half of Illinois' public school revenues are raised from property tax[3].

The Illinois Constitution, which requires that property taxes be uniform based on a property's value, limits exemptions from property tax but does give the Illinois General Assembly the authority to grant homestead exemptions:

> "The General Assembly by law may 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." (Emphasis added)*.

Reacting to voters' concerns about high property tax bills, the Illinois General Assembly has enacted a number of homestead exemptions. Each has its own set of "rules" that present administrative challenges for assessing officials and ultimately confuse the citizens these homestead exemptions are designed to help. The starkest example was the Adjusted General Homestead Exemption (*i.e.,* the seven percent "solution") that Cook County used to shield homeowners from increasing property taxes during the real estate boom.

| PUBLIC EDUCATION RELIANCE ON PROPERTY TAXES (2010-2011) | | | |
|---|---|---|---|
| **State** | **Rank** | **Property Tax Amount (in thousands)** | **Percent of Total Income (all sources)** |
| **United States (average)** | | **$211,651,391** | **35.0%** |
| Connecticut | 1 | 5,568,317 | 55.7 |
| New Jersey | 2 | 13,665,700 | 54.2 |
| New Hampshire | 3 | 1,521,271 | 53.5 |
| Rhode Island | 4 | 1,166,220 | 51.2 |
| Massachusetts | 5 | 7,801,657 | 50.8 |
| **ILLINOIS** | **6** | **14,482,300** | **50.1** |
| Missouri | 10 | 4,563,463 | 44.9 |
| Wisconsin | 13 | 4,714,226 | 41.2 |
| Iowa | 21 | 1,913,657 | 32.4 |
| Michigan | 30 | 5,182,643 | 26.6 |
| Indiana | 39 | 2,810,010 | 23.9 |
| Kentucky | 43 | 1,584,905 | 22.7 |

Source: National Center for Education Statistics

Most important, administering homestead exemptions diverts assessors (who spend up to one-third of their resources administering homestead exemptions) from their fundamental responsibility of uniformly valuing property. Erosion of uniformity undermines the entire property tax system.

## Background

Homestead exemptions are a type of property tax relief intended to reduce the taxable value of a homeowner's primary residence and therefore the individual tax bill. Most states have property tax relief in the form of a homestead exemption; the amount and how the exemption is calculated varies from state to state[4]. In Illinois, homestead exemptions are typically subtracted from a property's value, called the "equalized assessed value" (EAV), before the tax bill is calculated.[5]

The first homestead exemptions (the Senior Citizens Homestead Exemption, Homestead Improvement Exemption, and General Homestead Exemption) were all enacted in the 1970s in response to double-digit growth in property values and tax extensions. With the exception of the Senior Citizens Assessment Freeze Homestead Exemption, created in 1994, all other homestead exemptions were legislated after 2003 – again in response to rapidly appreciating home values that were outpacing commercial and industrial property values. The propagation of homestead exemptions not only has a direct impact on the amount of EAV available to local tax districts, but also further complicates the property tax system by making it less transparent and more confusing. Assessment officials spend a significant amount of time providing customer service explaining each exemption and helping individuals with required applications and supporting documents.

A summary of Illinois' homestead exemptions is listed on **page 4**.[6] Five of the eleven homestead exemptions were enacted in 2007 and after.

**Senior Citizens Homestead Exemption (35 ILCS 200/15-170)**, available on a principle residence of someone 65 or older who is liable for paying the property taxes, and is an "owner of record". The exemption is also allowed if the individual has a legal or equitable interest in the property as shown on a legal document. Leasehold interests qualify only if the leasehold is land on which a single-family dwelling is located (as long as all other qualifications are met). Seniors living in cooperatives and life care facilities may also qualify for this exemption if they are liable for paying the taxes (among other qualifications). The exemption continues if the senior citizen moves to a nursing home as long as a qualifying spouse is still living in the home, or the home is not occupied, but the qualifying senior still owns the home. Partial year exemptions are also allowed.

**Homestead Improvement Exemption (35 ILCS 200/15-180)**, available on homestead property to which improvements are added (*e.g.,* adding a room, sun porch, garage, swimming pool, storage shed, replacing asbestos siding); or that is rebuilt after a catastrophic event.

| 2012 Homestead Exemptions | | | | |
|---|---|---|---|---|
| **Homestead Exemption** | **Number** | **EAV Reduction** | **Average Exemption** | **Maximum Exemption** |
| **Senior Citizens (1970)** | 774,024 | $3,304,209,947 | $4,269 | $5,000 (Cook County); $4,000 (Outside Cook) |
| **Homestead Improvement (1975)** | 73,935 | $378,451,973 | $5,119 | $75,000 |
| **General (1978)** | 3,178,923 | $20,451,962,634 | $6,434 | $7,000 (Cook County); $6,000 (Outside Cook) |
| **Disabled Veterans (modified housing) (1980)** | 326 | $15,034,473 | $46,118 | $70,000 |
| **Senior Freeze (1994)** | 328,199 | $3,580,605,396 | $10,910 | No maximum |
| **AGHE[1] (2004)** | | $115,738,828 | | |
| **Disabled Veterans' Standard (2007)** | | | | |
| **50%-69% service-connected disability** | 3,586 | $8,898,893 | $2,482 | $2,500 |
| **70%-100% service-connected disability** | 8,678 | $42,718,536 | $4,923 | $5,000 |
| **Returning Veterans (2007)** | 649 | $3,221,834 | $4,964 | $5,000 |
| **Disabled Persons (2007)** | 49,892 | $98,197,509 | $1,968 | $5,000 |
| **Long-time Occupant[2] (2007)** | | | | No maximum |
| **Natural Disaster (2012)** | 0 | $0 | $0 | Varies[3] |

[1] Unable to separate AGHE from GHE; the average is a reflection of the downturn in the housing market and that the maximum exemption in Triad 1 (city) is $7,000. At its highest, the average was $19,750.

[2] Data not available due to reporting requirements/limitations.

[3] Equal to the reduction in EAV of the residence in the first taxable year for which the taxpayer applies for an exemption minus the EAV of the residence for the taxable year before the taxable year in which the natural disaster occurred and is limited to 110% increase in square footage from the original residence.

Source: Illinois Department of Revenue

For new additions, the HIE equals the fair cash value that the new improvement adds to the homestead property. The exemption continues for four years from the date the improvement is completed. In the case of a rebuilt structure, the HIE is the difference in any increase in assessed value from the previous building. A single parcel may have multiple HIEs, each of which is effective four years. For example, in year one, a room is added to the existing structure. The HIE for the added room continues for four years. In year two, a free-standing garage is added. A second HIE is granted, and that exemption continues for four years.

**General Homestead Exemption (35 ILCS 200/ 15-175)**, available on a principle residence. A leased home qualifies as long as the property is a single-family residence, the lessee has a legal or equitable interest in the property, and is liable for paying the property taxes. The exemption is the property's current year EAV minus the 1977 EAV, up to the maximum

## NOTES FROM THE INSIDE. . .

### By Carol S. Portman

This issue of *Tax Facts* focuses on property taxation, naturally an area of long-standing interest at the Taxpayers' Federation. Kara Moretto provides an overview of homestead exemptions, the politically popular—and proliferating--tax breaks for homeowners. There are currently 11 separate homestead exemptions on the books, five of them enacted since 2007.

Kara's research points out two significant facts. First (because there are 11 separate exemptions) they confuse property owners and take up a significant amount of local assessors' time. Chief County Assessment Officers spend up to a third of their time answering questions about these exemptions and administering them. Given that equitable assessments are the foundation of fair taxation, one has to ask whether this is time well spent.

The second point is that these exemptions do not cut taxes; they simply shift them, first onto non-homestead properties and then, because they result in higher rates, back onto the same homestead properties that received the break. In a hypothetical taxing district consisting of only homestead properties all claiming the exemption, there would be no savings at all. A group of assessment officials is trying to assemble a plan to streamline the exemption process. Kara has documented the need, and we look forward to working towards a solution.

The second article is from David A. Suess, a partner at TFI member Faegre Baker Daniels LLP. David reviews property tax cases decided by Illinois courts in the last two years. One clear message: the courts have given substantial deference to the Property Tax Appeal Board, a good reminder of the importance of making strong arguments before PTAB.

Future issues of *Tax Facts* will feature additional insights into Illinois' property tax structure, recent cases in other tax areas, and an interesting angle on education funding in Illinois and nationwide.

allowed. Most properties receive the full exemption. Part-year exemptions are also allowed when a property is valued for a portion of the year (*e.g.,* an empty lot exists on January 1st, a home is built and completed on August 1st, but not assessed until it is occupied).

Beginning 1991, Cook County has had a different maximum exemption. The pause in increases in the maximum amount from 1991 until 2004 is likely the result of the enactment of the Property Tax Extension Limitation Law (PTELL), commonly called "tax caps".[7]

**Disabled Veterans' Homestead Exemption (35 ILC 200/15-166),** available on a disabled veteran's primary residence when federal funds are used to purchase a home or make special adaptations to suit the veteran's disability. The Illinois Department of Veterans Affairs certifies which properties qualify for this exemption.

**Senior Citizens Assessment Freeze Homestead Exemption (35 ILCS 200/15-172),** available on the principle residence of someone 65 and older whose total household income is $55,000 or less**.** This exemption "freezes" the property's EAV to the value the year before qualifications are met (*i.e.,* the "base" year). The base year EAV is adjusted for any improvements, such as a room addition and is also "reset" if the property EAV falls below the original base year EAV.

**Alternative General Homestead Exemption (35 ILCS 200/15-176)**, available on a principle residence when property value increased more than 7 percent from “base” year (Cook County only).

This twist on the General Homestead Exemption ultimately became known as the 7% expanded homeowner exemption. The legislation was mandated for Cook County, but any other county was able to adopt the AGHE; none chose to do so, however. As designed, the assessor still determined the property’s value; however, the homeowner generally did not pay property tax on any increase above 7 percent from the base year EAV. The minimum exemption was the same as the General Homestead Exemption amount; the maximum amount varied based on the assessment year. Residential properties that qualified for the Senior Citizens Assessment Freeze Homestead Exemption could not receive this exemption. The exemption was removed when the property transferred to another person (unless the transfer was between spouses or parents and children). The property’s base year value was adjusted for improvements.

At its peak (2008), the AGHE benefitted over 1 million properties with a total EAV reduction of $20.8 billion. The average exemption was $19,750. The housing market crash essentially eliminated any need for this exemption, since it was designed to protect residential homeowners from rapidly increasing property value. For more information on the impact of the housing bubble burst and the effect of the AGHE, see “The Seven Percent Solution Falls Victim to the Real Estate Crash”, Tax Facts, March/April 2013.[8]

**AGHE HISTORY AMOUNT BY TRIAD**

| Year | Triad Reassessed | Year 1 Maximum | Year 2 Maximum | Year 3 Maximum |
|---|---|---|---|---|
| 2003 | City | $20,000 | $20,000 | $20,000 |
| 2004 | North | $20,000 | $20,000 | $20,000 |
| 2005 | South | $20,000 | $20,000 | $20,000 |
| 2006 | City | $33,000 (2006)* | $26,000 | $20,000 |
| 2007 | North | $33,000 | $26,000 | $20,000 |
| 2008 | South | $33,000 | $26,000 | $20,000 |
| 2009 | City | $20,000 | $16,000 | $12,000 |
| 2010 | North | $20,000 | $16,000 | $12,000 |
| 2011 | South | $20,000 | $16,000 | $12,000 |

Source: Illinois Department of Revenue

**Long-time Occupant Homestead Exemption (35 ILCS 200/15-177)** (Cook County only), available on a principle residence of person with total household income less than $100,000 and who has owned the property for 10 continuous years (5 years if the person receives assistance to acquire the property as part of a government or non-profit housing program). Like the AGHE, this exemption does not require the property owner to pay taxes on a specific increase in equalized assessed value over the base year; however, the LOHE percentage is based on total household income. A property owner does not pay taxes on any increase in EAV above 10% each year if household income is more than $75,000 but less than $100,000; 7% each year if household income is $75,000 or less.

Properties that qualify for the Senior Citizen Assessment Freeze Homestead Exemption may not receive the LOHE. The exemption is removed when the property transferred to another person (unless the transfer was between spouses or parents and children). The property's base year value is adjusted for improvements.

**Disabled Veterans' Standard Homestead Exemption (35 ILCS 200/15-169)**, available on an owned or leased single-family residence of veteran with a service-connected disability who is responsible for paying the property taxes. This exemption is based on the percentage of the service-connected disability, which must be certified by the U.S. Department of Veteran's Affairs. An un-remarried surviving spouse can continue to receive the exemption or transfer the DVSHE to another primary residence after the disabled veteran's original primary residence is sold.

**Returning Veterans' Homestead Exemption (35 ILCS 200/15-167)**, available on a principle residence of a veteran upon returning from active duty in an armed conflict involving the armed forces of the United States. The exemption applies for two years; but, a veteran can receive this exemption for each qualifying tour of active duty.

**Disabled Persons Homestead Exemption (35 ILCS 200/15-168)**, available on principle residence of disabled individual if the disabled person is liable for paying the property taxes. While a unit in a cooperative apartment building qualifies for the exemption, a leasehold interest does not. The individual must provide proof of the disability.

**Natural Disaster Homestead Exemption (35 ILCS 200/15-173)**, available on homestead property when a residential structure is rebuilt after a natural disaster. The exemption is equal to the reduction in EAV of the residence in the first taxable year for which the taxpayer applies for an exemption minus the EAV of the residence for the taxable year before the taxable year in which the natural disaster occurred and is limited to 110% increase in square footage from the original residence. The exemption continues until the property is sold or transferred. A property cannot receive this exemption and the Homestead Improvement Exemption for the same natural disaster or catastrophic event. The exemption carries over to a surviving spouse who holds a legal or beneficial title to the homestead and permanently resides on the property.

## Policy Implications

Policy concerns arise when any group receives a benefit under any tax. Property taxes and homestead exemptions are no exception.

At a fundamental level, homestead exemptions are but the first step of moving away from a truly *ad valorem* tax, meaning the tie between actual market value and corresponding tax bill is "broken" because a portion of EAV has been removed. This disconnect between market value and resulting tax bills complicates the tax system and makes it less transparent.

## HOMESTEAD EXEMPTION HISTORY

| | |
|---|---|
| 1970 | Senior Homestead Exemption enacted, $1,500 maximum |
| 1975 | Homestead Improvement Exemption enacted, $30,000 in assessed value maximum |
| 1978 | General Homestead Exemption enacted, $1,500 maximum |
| 1980 | General Homestead Exemption increase to $3,000 maximum |
| 1980 | Disabled Veterans' Homestead Exemption enacted |
| 1984 | Senior Homestead Exemption increased to $2,000 maximum |
| 1985 | General Homestead Exemption increased to $3,500 maximum |
| 1990 | Disabled Veterans' Homestead Exemption increased to $50,000 |
| 1991 | General Homestead Exemption increased to $4,500 maximum (Cook County only) |
| 1991 | Senior Citizens Homestead Exemption increased to $2,500 maximum (Cook County only) |
| 1994 | Senior Citizens Assessment Freeze Homestead Exemption enacted, total household income threshold is $35,000; no maximum exemption |
| 1998 | Homestead Improvement Exemption increased to $45,000 maximum |
| 1999 | Senior Citizens Assessment Freeze Homestead Exemption total household income increased to $40,000; no maximum exemption |
| 1999 | Disabled Veterans' Homestead Exemption increased to $58,000 |
| 2004 | General Homestead Exemption increased to $5,000 |
| 2004 | Alternative General Homestead Exemption enacted, $20,000 for each of three assessment years (Cook County only) |
| 2004 | Senior Citizens Homestead Exemption increased to $3,000 maximum |
| 2004 | Senior Citizens Assessment Freeze Homestead Exemption total household income increased to $45,000 |
| 2004 | Homestead Improvement Exemption increased to $75,000 |
| 2005 | Senior Citizens Assessment Freeze Homestead Exemption total household income increased to $50,000 (graduated benefit between $45-$50k), no maximum exemption |
| 2005 | Disabled Veterans' Homestead Exemption increased to $70,000 |
| 2006 | Senior Citizens Homestead Exemption increased to $3,500 |
| 2006 | Alternative General Homestead Exemption renewed; $33,000, $26,000, $20,000 maximum (year 1, 2, 3) |
| 2006 | Senior freeze homestead exemption total household income $55,000 (no graduated benefit) no maximum exemption |
| 2007 | Long-time occupant homestead exemption enacted, total household income less than $100,000 |
| 2007 | Disabled Veterans' Standard Homestead Exemption enacted; $2,500 maximum <75% disability; $5,000 maximum, 75-100% disability |
| 2007 | Disabled Persons Homestead Exemption enacted; $5,000 maximum |
| 2007 | Returning Veterans' Homestead Exemption enacted; $5,000 maximum |
| 2008 | Senior Citizens Homestead Exemption increased to $4,000 maximum |
| 2008 | General Homestead Exemption increased to $5,500 maximum |
| 2008 | Disabled veterans standard homestead exemption; $2,500 <70% disability; $5,000 70-100% disability |
| 2009 | General Homestead Exemption increased to $6,000 |
| 2010 | Alternative General Homestead Exemption renewed, $20,000, $16,000, $12,000 maximum (year 1, 2, 3) |
| 2012 | General Homestead Exemption increased to $7,000 maximum (Cook County only) |
| 2012 | Senior Citizens Homestead Exemption increased to $5,000 (Cook County only) |
| 2013 | Senior Citizens Homestead Exemption increased to $5,000 (all other counties) |

To illustrate lack of transparency: Because homestead exemptions are designed to reduce residential property EAV, the residential "share" of the total tax burden is generally shifted to non-homestead property (*e.g.,* apartments, commercial, industrial properties). But, a significant number of preferential assessments, use-value assessments, and non-homestead exemptions, which **also** reduce the total tax bill, are available to non-homestead properties onto which some of the residential tax burden is shifted. As a result, part of the residential tax burden transferred to these properties may be shifted back onto the residential property, particularly in small rural counties with a small tax base. The percentage of the total tax base removed by homestead exemptions is directly related to the percentage of residential property and the rate at which EAV is increasing.

In some counties the erosion of the tax base is significant. For example, in Pulaski County, 44.52 percent of the residential EAV is removed by homestead exemptions and 307 parcels receive a zero dollar tax bill.

Illinois' current homestead exemptions are usually a flat-dollar amount, not a percentage of property value; and, most are not based on a taxpayer's income. Flat dollar homestead exemptions are considered progressive because they have a greater impact for lower-valued properties; however, a flat-dollar exemption is regressive when a low-income homeowner's pay has not kept pace with the property value increases. Because homestead exemptions do not target relief to the poorest households, some believe that the amount of the homestead exemption should be based on household income, or a combination of income and property value. Another negative aspect of a flat-dollar exemption is that the exemption tends to lose value over time.

Finally, homestead exemptions (and preferential assessments) usually produce a higher aggregate tax rate. As the tax base is removed, a taxing district's tax rate will be higher in order to produce the same amount of

**EXAMPLE: HIGHER TAX RATES ERODE EXEMPTION VALUE**

To see the effect of the higher tax rates, take a hypothetical taxing district that has just two properties, one homestead and one non-homestead, each with an EAV of $100,000. If the taxing district sets a levy of $16,000, the resulting tax rate will be 8 percent and each property will pay $8,000.

Now, give the homestead property a $10,000 homestead exemption. The tax rated needed to produce the $16,000 levy increases to 8.421 percent. The homestead property will pay $7,579 and the non-homestead property will pay $8,421. The $421 savings for the homestead property is half of the apparent $842 savings that a homeowner would calculate by multiplying the $10,000 homestead exemption by the 8.421 percent tax rate.

**EXAMPLE HOMESTEAD EXEMPTION IMPACT ON TAX RATES**

| | No Homestead Exemption | | With Homestead Exemption | |
|---|---|---|---|---|
| Taxing District Levy | $16,000 | | $16,000 | |
| EAV | $200,000 | | $190,000 | |
| Tax Rate Needed to Produce Levy | 8.0000% | | 8.4211% | |
| | **Non-Homestead** | **Homestead** | **Non-Homestead** | **Homestead** |
| Parcel EAV | $100,000 | $100,000 | $100,000 | $100,000 |
| Homestead Exemptions | $0 | $0 | $0 | $10,000 |
| | $100,000 | $100,000 | $100,000 | $90,000 |
| Tax Rate | 8.0000% | 8.0000% | 8.4211% | 8.4211% |
| Tax Bill | $8,000 | $8,000 | $8,421 | $7,579 |
| **Presumed Savings** | | | | **$842** |
| **Actual Savings** | | | | **$421** |

revenue. If the remaining tax base is not large enough to absorb the shift off residential property, then, if the taxing district is not already at its maximum tax rate, some of the tax burden is transferred back onto the residential property in the form of a higher tax rate. If taxing districts are extending taxes at maximum rates and there is not enough tax base onto which the burden can be shifted, taxing district revenues decline.

The hidden tax rate shift means the effect homestead exemptions have on taxing district revenues varies by locale and the mix of residential, commercial, industrial, and farm parcels. A bedroom community that is heavily homestead properties will see much of a homestead property's reduction in assessed value shifted back onto itself through higher rates, whereas a community with significant commercial or industrial tax base will see the homestead savings shifted onto non-homestead properties. The shift assumes that taxing districts are not at or close to maximum rates (generally true in taxing districts covered by PTELL), but when taxing districts are extending taxes at maximum rates (particularly rural Illinois taxing districts made up of mostly residential and farm parcels) the higher homestead exemptions will reduce taxing district receipts.

## Complications created by growth and expansion of homestead exemptions

Clearly, a number of new homestead exemptions have been legislated since the first homestead exemptions were enacted in the 1970s. While each is a "homestead exemption", the definitions, qualifying properties, the value on which the exemption is calculated, and application processes are not consistent. For example, the Homestead Improvement Exemption exempts the fair cash (market) value, the Disabled Veteran Homestead Exemption exempts a portion of the assessed value, and other homestead exemptions

**HOMESTEAD EXEMPTIONS IMPACT ON EAV (Select Years)**

| | 1981 | 1991 | 2001 | 2006 | 2011 | 2012 |
|---|---|---|---|---|---|---|
| **Total EAV** | | | | | | |
| Statewide | $83,007,373,722 | $138,587,665,896 | $235,484,164,458 | $367,512,056,002 | $377,164,874,496 | $348,994,455,426 |
| Cook County | $33,433,295,557 | $65,802,616,059 | $105,307,004,484 | $179,044,901,807 | $175,607,357,481 | $157,306,412,354 |
| Collar Counties | $17,487,323,346 | $38,573,733,033 | $72,142,108,120 | $113,311,680,465 | $114,723,801,145 | $105,878,193,316 |
| Rest of State | $32,086,754,819 | $34,211,316,804 | $58,035,051,854 | $74,933,099,865 | $86,833,715,870 | $85,809,849,756 |
| **Total of all homestead exemptions** | | | | | | |
| Statewide | $7,015,421,863 | $10,880,638,574 | $15,153,911,129 | $36,187,045,376 | $29,420,550,331 | $27,883,301,195 |
| Cook County | $2,589,695,827 | $4,898,538,718 | $6,204,574,575 | $21,718,139,009 | $12,642,756,439 | $11,557,220,193 |
| Collar Counties | $1,447,342,904 | $2,230,971,107 | $3,345,423,274 | $5,841,108,313 | $6,621,778,884 | $6,382,280,434 |
| Rest of State | $2,978,383,132 | $3,751,128,749 | $5,603,913,280 | $8,627,798,054 | $10,156,015,008 | $9,943,800,568 |
| **Percent of total EAV removed by homestead exemptions** | | | | | | |
| Statewide | 8.45% | 7.85% | 6.44% | 9.85% | 7.80% | 7.99% |
| Cook County | 7.75% | 7.44% | 5.89% | 12.13% | 7.20% | 7.35% |
| Collar Counties | 8.28% | 5.78% | 4.64% | 5.15% | 5.77% | 6.03% |
| Rest of State | 9.28% | 10.96% | 9.66% | 11.51% | 11.70% | 11.59% |

**Note:** The increase in EAV removed from the total base in 2006 in Cook County reflects the new alternative general homestead exemption.

Source: Illinois Department of Revenue

exempt a portion of the property's Equalized Assessed Value. Most are flat dollar amounts and two are unlimited if qualifications are met. Several require various types of supporting documentation. Two require proof of income; two require proof of disability. Some exemptions must be renewed annually and some require assessment officials send annual affidavits once a person qualifies. Others require that assessment officials provide a form to notify additional parties that an exemption must be renewed. **See Responsibilities - Page 13.**

The Senior Citizens Assessment Freeze Homestead Exemption burdens assessment officials and confuses senior citizens. The income definition is cumbersome and must be "verified" by individuals with little or no way of confirming the income is reported correctly. **See Income Sources - Page 12.** (The income is subject to audit by the assessor's office). Low-income seniors, who may not have been required to file an income tax return, must locate and provide all pertinent income documents to demonstrate the income threshold is not exceeded. Senior citizens often think that the exemption freezes the tax bill and are mystified that their tax bills increase. Part of the problem could be the naming convention (*i.e.,* "freeze" is often interpreted as a tax bill "freeze", not a "freeze" in EAV). Another is that many Illinois property owners simply do not understand the dynamic between EAV (frozen or not) and tax rates. (To wit: Many property owners – in general - are confused why their tax bills are higher even though their property values declined as a result of the housing market crash.) Assessment officials spend more time administering this exemption than any other homestead exemption. Most assessment officials' offices help seniors complete the application and attempt to "verify" income to the extent possible. Many compare total household income to property value (and consider such things as the length of time an individual has owned the home, etc.).

Another complication administrators face is the provision in the General Homestead Exemption which grants the exemption to certain leaseholds. Some counties grant the General Homestead Exemption to all rental property, regardless of the length of the lease. For example, some counties automatically grant a homestead exemption when an apartment is rented to a college student. The statutory verbiage does allow the Chief County Assessment Officer to require a notarized application, and a copy of the lease which must state that the renter is responsible for paying the property taxes. (35 ILCS 200/15-175(e)), but, since the statutory verbiage is permissive, some counties elect not to follow this practice.

And, sometimes creation of new exemptions has unintended consequences. For example, the definition of "disabled person" is "a person unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to last for a continuous period of not less than 12 months." This definition applies to

## SENIOR CITIZEN ASSESSMENT FREEZE HOMESTEAD EXEMPTION INCOME SOURCES

Examples of income that must be included:

- alimony or maintenance received
- annuities and other pensions
- Black Lung benefits
- business income
- capital gains
- cash assistance from the Illinois Department of Human Services and other governmental cash public assistance
- cash winnings from such sources as raffles and lotteries
- Civil Service benefits
- damages awarded in a lawsuit for nonphysical injury or sickness (for example, age discrimination or injury to reputation)
- dividends
- farm income
- Illinois Income Tax refund (only if applicant received Form 1099-G)
- interest
- interest received on life insurance policies
- long term care insurance (federally taxable portion only)
- lump sum Social Security payments
- miscellaneous income, such as from rummage sales, recycling aluminum, or baby sitting
- military retirement pay based on age or length of service
- monthly insurance benefits
- pension and IRA benefits (federally taxable portion only)
- Railroad Retirement benefits (including Medicare deductions)
- rental income
- Illinois Cares Rx rebate (only if applicant took an itemized deduction for health insurance in the prior year on the federal income tax return)
- Social Security income (including Medicare deductions)
- Supplemental Security Income (SSI) benefits
- all unemployment compensation
- wages, salaries, and tips from work
- Workers' Compensation Act income
- Workers' Occupational Diseases Act income

Examples of income that are not included in household income:

- cash gifts
- child support payments
- COBRA subsidy payments
- damages awarded in a lawsuit for a physical personal injury or sickness
- Energy Assistance payments
- federal income tax refunds
- IRA's "rolled over" into other retirement accounts, unless "rolled over" into a Roth IRA
- lump sums from inheritances
- lump sums from insurance policies
- money borrowed against a life insurance policy or from any financial institution
- reverse mortgage payments
- spousal impoverishment payments
- stipends from Foster Parent and Foster Grandparent programs
- Veterans' benefits

Source: Form PTAX-340, Senior Citizens Assessment Freeze Application

## SAMPLE OF ASSESSMENT OFFICIAL ADMINISTRATIVE RESPONSIBILITIES BY HOMESTEAD EXEMPTION

The information in this table is a representation of some of the administrative duties for select homestead exemptions (e.g., proof of eligibility, housing types, benefits to spouses).

**Returning Veterans' Homestead Exemption**

Validate return from active service by original or certified copy of DD-214 (if discharged) or DD-220 and military orders and travel voucher specifying year returned from active duty.

**Disabled Persons' Homestead Exemption**

Ensure proof of disability is provided:

1. A Class 2 Illinois Person with a Disability Identification Card from the Illinois Secretary of State's Office. Class 2 or Class 2A qualifies for this exemption. (Class 1 or 1A does not qualify.)
2. Proof of Social Security Administration disability benefits which includes an award letter, verification letter, or annual Cost of Living Adjustment (COLA) letter (only COLA Form SSA-4926- SM-DI). If applicant is under full retirement age and receiving Supplemental Security Income (SSI) disability benefits, proof includes a letter indicating SSI payments (COLA Forms SSA-L8151, SSA-L8155, or SSA-L8156).
3. Proof of Veterans Administration disability benefits, which includes an award letter or verification letter indicating applicant is receiving a pension for a non-service connected disability.
4. Proof of Railroad or Civil Service disability benefits, which includes an award letter or verification letter of total (100%) disability.
5. Physician's Statement for the Homestead Exemption for Persons with Disabilities (completed by physician). Applicant may be required to provide additional documentation and is responsible for any physicians' costs.

If requested, send a duplicate property tax delinquency notice to a designated person.

Verify applicant owns or has a legal or equitable interest in the property on which a single-family residence is occupied as the primary residence on January 1 of the assessment year, and that the owner is liable for the payment of the property taxes.

If applicant previously received the exemption and now resides in a facility licensed under the ID/DD (intellectually disabled/developmentally disabled) Community Care Act, Nursing Home Care Act, or Specialized Mental Health Rehabilitation Act of 2013, verify the property is occupied by the applicant's spouse; or that the property remains unoccupied during the assessment year.

If the applicant is a resident of a cooperative apartment building or life care facility as defined under Section 2 of the Life Care Facilities Act, verify the applicant occupies the property as the primary residence and that the applicant is liable by contract with the owner to pay the property taxes, and that the applicant is an owner of record with a legal or equitable interest therein. Verify NOT a leasehold interest (does not qualify for the exemption).

**Disabled Veterans' Standard Homestead Exemption**

Verify proof of disability - applicant must submit a disability award or verification letter from the U.S. Department of Veterans' Affairs for the current assessment year and one of the following documents that is the original or a copy certified by the county recorder, recorder of deeds, Illinois Department of Veterans' Affairs, or the National Archives Record Center.

- Form DD 214 or separation of service from the War Department (military service prior to 1950); or
- Certification of Military Service Form.

Verify that the letter specifies the service-connect disability rate (any other rating is not valid).

Verify the property's total EAV is less than $250,000 after subtracting any portion used for commercial purposes. "Commercial purposes" include any portion of the property rented for more than 6 months.

If applicant previously received the exemption and now resides in a facility licensed under the Nursing Home Care Act or operated by the U.S. Department of Veterans' Affairs, verify that the residence is occupied by the applicant's spouse or remains unoccupied during the assessment year.

Ensure that an un-remarried surviving spouse of a disabled veteran, who previously received this exemption, meets the following qualifications:

- owns and occupies the property as the primary residence on January 1 of the assessment year or leases and occupies a single-family residence on January 1
- is liable for payment of property taxes.
- provides the disabled veteran's marriage and death certificate
- provides proof of ownership

**Senior Citizens Homestead Exemption**

If applicant previously received this exemption and now resides in a facility licensed under the Assisted Living and Shared Housing Act, Nursing Home Care Act, or ID/DD (intellectually disabled/developmentally disabled) Community Care Act of 2013, or Specialized Mental Health Rehabilitation Act, ensure the property is occupied by a spouse, who is 65 years of age or older, or the property remains unoccupied during the assessment year.

If applicant is a resident of a cooperative apartment building, ensure the applicant is the owner of record of a legal or equitable interest in the property, occupies it as a principal residence, and is liable by contract for the payment of property taxes.

If applicant is a resident of a life care facility, ensure the resident has a life care contract with the owner of the facility and is liable for the payment of property taxes as required under the Life Care Facilities Act (210 ILCS 40/1 et. seq.).

**Senior Citizens Assessment Freeze Homestead Exemption**

Allow exemption for a surviving spouse who does not meet age requirement if spouse died during the assessment year and met all other qualifications.

If applicant previously received this exemption, meets all other requirements, but now resides in a facility licensed under the Assisted Living and Shared Housing Act, Nursing Home Care Act, or ID/DD (intellectually disabled/developmentally disabled) Community Care Act of 2013, or Specialized Mental Health Rehabilitation Act, ensure the property is occupied by a spouse (no age requirement) or the property remains unoccupied during the assessment year.

Grant exemption to a resident of a cooperative apartment building or cooperative life-care facility if applicant is liable for the payment of the property taxes and meets the other eligibility requirements.

Maintain base year EAV (property value the year before the applicant qualifies for the exemption).

Revise base year EAV for property value decline or added improvements.

Each year, in a newspaper of general circulation in the county, publish a notice of availability of the exemption at least 60 days but no more than 75 days prior to the date on which the application must be submitted.

If married persons maintain separate residences, ensure only one person/residence receives the exemption.

Verify total household income threshold (applicant, spouse, all other individuals living in the household) is not exceeded.

**General Homestead Exemption**

If married persons maintain and reside in separate residences qualifying as homestead property, allow 50% of the exemption in EAV.

Source: Property Tax Code and instructions for homestead exemption applications.

**ASSESSORS SHARE TALES FROM THE FRONT LINES, OR, "YOU CAN'T MAKE THIS UP"!**

*(Names omitted to protect the story-tellers)*

During an audit of all SCAFHE applications for homes that had a Fair Cash Value exceeding $1,000,000, I discovered that several persons were listed as registered voters at that address and had actually voted both before and after the lien date, but were not listed on the SCAFHE application form. I contacted the applicant and asked for income of all persons in household, providing names from the voting record, only to be informed by the taxpayer that the person in question was his adult daughter who "doesn't really live here, she just uses this house as her voting address." After I explained that voter fraud was a much bigger deal than homestead exemption fraud, the taxpayer withdrew the application.

A taxpayer called me to complain that he had been denied the DVSHE. When I checked the file, I found the reason that he was denied was that he did not provide a DD214. When I asked him about it, he explained the reason: He wasn't a disabled veteran of the American army, but the "German Army."

I was talking to a taxpayer who had a general complaint about taxes being too high, and noted that he had been recently diagnosed with macular degeneration and was going blind. I responded that such a diagnosis was a class 2 disability and asked if he had the Secretary of State's Disabled Persons ID Card so he could qualify for the DPHE. He said, "Oh yeah, I made sure I got that card on my way home from the eye doctor's." I complimented him on his positive outlook, saying that most people who find out they were losing their eyesight wouldn't automatically think ahead like he did. He responded, "Plus, with that card I can now renew my FOID card for free!"

I had a person come in to get the general homestead exemption. The property he requested for the exemption was in the name of his corporation. I explained he could not receive this exemption unless he actually owned the property. Being the kind soul he was, he produced 3 other tax bills on property that he owned. He suggested I pick one of them and apply the exemption to it. I asked where his primary residence was, he answered" wherever you will give me the exemption" Needless to say, he is homeless!

many senior citizens. As a result, a number of seniors are receiving both the Disabled Persons Homestead Exemption and the Senior Citizens Homestead Exemption (and likely the Senior Citizens Assessment Freeze Homestead Exemption as well). What was the General Assembly's intent when it passed the Disabled Persons Homestead Exemption?

The lack of consistency between homestead exemptions contributes to the administrative challenge for assessment officials. Because of the various nuances, county assessors are often forced to reallocate resources to oversee these programs and to provide "customer service" to property owners and taxpayers who do not understand if they qualify and or have questions about what supporting documents are needed to receive the exemption. In essence, county assessment officials have no choice but to either hire additional personnel or to redirect personnel from the business of valuing property for ad valorem tax purposes.

When asked about the amount of time a county spends administering homestead exemptions, one Lee County Chief Assessment Officer, Wendy Ryerson, says, "I estimate my office spends between 30-35 percent of its time on exemptions between data entry, and phone/ counter traffic."

## Potential Solutions

Several legislative solutions would alleviate some of the homestead exemptions administrative burden and allow county assessment officials to spend more time on their primary function – valuing property for ad valorem property tax purposes.

- The definition of "homestead property" should be the same for all homestead exemptions.
- Homestead exemptions should be calculated on the property's equalized assessed value.
- The exemption amount granted to married persons living separately should be stated and be identical for all homestead exemptions (*i.e.,* the general homestead exemption is split; the SCAFHE is allowed for only one property).
- The SCAFHE income definition should be a line on the Illinois tax return, which would allow county assessment officials to collaborate with the Illinois Department of Revenue to verify income.

Making these types of legislative changes would allow property owner to file one homestead exemption application, for all homestead exemptions (a "check the box" approach).

Another option would be to consolidate all of the existing favored group exemptions into a single exemption whose basis was income. (Does it make sense to give a wealthy senior citizen a tax break just because he/she is 65 while making a struggling young family pay the full shot, plus a higher tax rate because of the senior's exemption?) Such an approach would further break the tie between property value and tax owed, but would ease the pressures to create more homestead exemptions. A danger would be the temptation to shift tax burden off voters (homeowners) and onto non-homeowners. And an income test would require an easily verifiable standards, probably from the Illinois income tax return.

**Summary**

As property taxes have grown, so have homestead exemptions as a property tax relief measure. Homestead exemptions are not simple, for homeowners or for assessors. The process should be simplified so that assessment officials can spend more time on their most critical function, equitably valuing property. Without equitable assessments the property tax system cannot work.

[1] http://www.taxpolicycenter.org/UploadedPDF/412959-Residential-Property-Taxes.pdf

[2] http://illinoisissues.uis.edu/archives/2010/05/taxdistricts.html

[3] http://nces.ed.gov/programs/digest/d13/tables/dt13_235.20.asp

[4] For more information, see https://www.lincolninst.edu/subcenters/significant-features-property-tax/Report_Residential_Property_Tax_Relief_Programs.aspx

[5] The Homestead Improvement Exemption and Disabled Veterans Homestead Exemption are subtracted before the state multiplier is added.

[6] For a detailed explanation of homestead exemptions, see the Illinois Department of Revenue's web site at this link: http://www.revenue.state.il.us/LocalGovernment/PropertyTax/taxrelief.htm

[7] The tax cap is another effort designed to curb escalating property tax bills by limiting a taxing district's ability to increase revenues to the lesser of 5 percent or the annual change in Consumer Price Index for all urban consumer (CPI-U).

[8] http://www.iltaxwatch.org/pages/show/tax_facts

# PROPERTY TAX UPDATE

## By David A. Suess

*David Suess is a Partner with Faegre Baker Daniels LLP, focusing his legal practice on resolving disputes involving state and local taxes, including property taxes and complex valuation appeals.*



Over the past few years, Illinois courts have issued a number of decisions involving property taxes, usually arising out of proceedings before the Illinois Property Tax Appeal Board ("PTAB"). Below is a summary of decisions issued over the past two years. The goal of the following summaries is to highlight a few of the more substantive issues addressed by the Appellate Courts in these decisions. Additionally, while most of the focus will be on "published" decisions, which may be cited as authority, "unpublished" opinions are also discussed, even though such decisions may not be cited as precedent. [*Editor's Note* - the section headings preceding the discussion of the cases are those of the author, and not part of the decisions.]

**<u>Out-of-Market Sales Comparables – Questions of Fact – Province of the PTAB</u>**

***Bd. Of Education of Ridgeland Sch. Dist. No. 122 v. Illinois Property Tax Appeal Board***, 975 N.E.2d 263(Ill. Ct. App. 2012). In this case, an Intervenor-School District appealed a decision of the Illinois Property Tax Appeal Board ("PTAB"), which had reduced the assessed value of Taxpayer's (Sears) property – a two-story, 211,000 square foot commercial property – based largely on the appraisal and testimony of the Taxpayer's appraiser. In affirming the PTAB's decision reducing the assessment, the Appellate Court made several points, including:

(1) Though Illinois law prefers the use of a sales-comparison approach, Illinois law does not absolutely require the use of the approach, nor is a single-valuation method inadequate as a matter of law, 975 N.E.2d at 269 (citing *Cook County Bd. Of Review v. Property Tax Appeal Board (Omni)*, 384 Ill.App.3d 472 (Ill. Ct. App. 2008)).

(2) Reliance upon out-of-state sale comparables is not inadequate as a matter of law, nor against the manifest weight of the evidence in this particular case. So long as adjustments are made to account for differences between the sale comparables and the subject property (*e.g.,* differences in location, demographic data, and types of properties compared), and so long as the PTAB understands and addresses the differences, the use of out-of-state sales is acceptable.

(3) Reversal was not required by the existence of prior PTAB decisions involving similar properties where the PTAB disfavored the use of out-of-state sale comparables – PTAB decisions are fact-specific and the Appellate Court is not bound by prior decisions of the PTAB.

***Kankakee County Bd. Of Review v. Property Tax Appeal Board (Armstrong)***, 969 N.E.2d 558 (Ill. Ct. App. 2012). This case is a garden-variety decision, which turns on the "manifest weight of the evidence" standard and, particularly, the PTAB's credibility- and evidence-weighting functions. This case shares certain aspects with the *Ridgeland School Dist.* decision above, particularly as it relates to the sales-comparison approach and the decision of the appraiser to use out-of-market comparables.

At issue was an industrial property that was "unique" in several respects, including the fact that it had a 40-year average weighted age, was very tall to accommodate the business process inside, and had been added to in stages over the years. The taxpayer's appraiser utilized out-of-market sales due to the uniqueness of the property and his opinion that it was inappropriate to use sale comparables involving multiple tenants or significant leases. The PTAB largely agreed with taxpayer's appraiser.

In affirming the decision of the PTAB, the Appellate Court made the following observations: First, given the uniqueness of the property at issue (an older industrial property with very tall building sections and numerous additions over the years), it was appropriate for the taxpayer's appraisers not to consider multi-tenant properties or properties where a significant portion of the property was leased at the time of sale; Second, there was no error in the PTAB's reliance on sale values from out-of-market properties – the evidence in the record supported the conclusion that "distance to the subject" was not a factor in the valuation of the subject.

***Marshall Field's – State Street v. Illinois Property Tax Appeal Board***, 2014 WL 718485 (Ill. Ct. App. 2014) – Unpublished Opinion/may not be cited as precedent. This case, while involving a significant property, was unpublished and largely tracked the courts' approaches in the above-decisions inasmuch as it was evaluated as a "manifest weight of the evidence" case. The case involved competing opinions of value by multiple appraisal witnesses, and the Appellate Court was unswayed by assertions of error regarding the PTAB's analysis or weighting of the evidence.

**<u>Power of PTAB to Craft its Own Valuation</u>**

***Kraft Foods, Inc. v. Illinois Property Tax Appeal Board***, 997 N.E.2d 835 (Ill. Ct. App. 2013). This case involved two primary issues: first, an argument that the PTAB erred as a matter of law by considering leased-fee bulk-sale transactions; and second, a challenge to the power and authority of the PTAB to craft its own valuation based on its selection of portions of appraisal elements (*e.g.*, sales) offered by each party. Like the two cases described above, the case ultimately turns on the Appellate Court's conclusion that the PTAB's determination was not against the manifest weight of the evidence. But along the way, the Appellate Court:

(1) Rejected the taxpayer's argument that the PTAB erred in choosing to accept some evidence while rejecting or discounting other evidence in the record. The Court opined that, inherent in the PTAB's powers to judge credibility and "weigh the evidence," is the power to incorporate portions of evidence into its decision. The Court noted that taxpayer's argument would require the PTAB to discount entirely the evidence of a party, even if it found only portions slightly less credible, *Id.* at 843.

(2) Rejected the taxpayer's argument that it was a legal error to rely, in part, on leased-fee bulk-sale transactions – instead, the Court determined that the Taxpayer's arguments were not "legal," but factual in nature; in essence, a request to reweigh the evidence. The Court rejected this request because it could not say that "all reasonable and unbiased persons would agree that the decision is erroneous and that an opposite conclusion is clearly evident." *Id.* at 844.

(3)Rejected taxpayer's argument (based on its reading of *Armstrong*, 969 N.E.2d 558(Ill. Ct. App. 2012)) that it was error for the PTAB to discount its out-of-market sales. The Court rejected this reading of *Armstrong* based on factual/record differences between the cases.

**Another Mulligan for the PTAB?**

***Lake County Bd. Of Review v. Illinois Property Tax Appeal Board***, 989 N.E.2d 745 (Ill. Ct. App. 2013). This case was the second round for the case involving the construction of 35 ILCS 200/10-155, Illinois' "open space" exemption, as applied to a private golf club. In round one, the Appellate Court reversed the PTAB's decision because it allowed the exemption only to the landscaped areas of the golf course. 953 N.E.2d 1010. The Appellate Court held that "land, even if it contains an improvement, may be granted open-space status if it conserves landscaped areas." *Id.* On remand, apparently believing this meant the open-space exemption applied to all improvements at the private golf club, the PTAB concluded that the exemption applied to the swimming pool, tennis facilities, golf learning center, parking lots, caddy shack, maintenance buildings, driveways and the halfway house because they "facilitate the existence of the golf course." 989 N.E.2d at 749. The taxing bodies appealed, and the Appellate Court again found the PTAB's application of the statute out-of-bounds. In providing the PTAB a mulligan and the opportunity to take another swing, the Appellate Court observed:

(1) "[W]e hold that 'conserve' as it is used in section 10-155… must be construed narrowly… and there must be some substantial nexus between the land for which the improvement is claimed and the landscaped area it is claimed to conserve. That is to say, the improvement in question must directly relate to and thus facilitate the existence of the golf course." *Id.* at 750.

(2) "We perceive no nexus between the swimming pool, tennis facilities, and riding arena and stables and the golf course… [Whereas] the halfway house and the caddy shack relate directly to and thus facilitate the existence of the golf course." *Id.*

(3) Turning to the remaining improvements, the court left again to the PTAB the task of determining whether they meet the open space exemption. The Court did, however, reject the taxpayer's argument that the clubhouse qualifies for the exemption because it generates revenue that is used to maintain the golf course: "Endorsing a rule that would encompass any improvement that generates revenue would violate [legislative intent that the exemption is to apply narrowly]. If a golf course were to operate a car dealership on a corner of its property, would it be entitled to favorable tax status simply because some of the money it generates might be spent on maintaining the course?" *Id.* at 751.

The Appellate Court directed the PTAB, on remand, to determine whether there is a "substantial nexus" between the remaining improvements – the clubhouse, maintenance buildings, driveways, and parking lots – and the golf course such that they relate directly to the course and facilitate its existence.

**Can I Get a Witness (Who Is Not My Attorney)?**

***Moroney and Co. v. Illinois Property Tax Appeal Board***, 2 N.E.3d 522 (Ill. Ct. App. 2013). This case involves a taxpayer's appeal over the refusal of the assessor, the County Board of Review ("BOR") and the PTAB to allow an assessment reduction based on claims that the property was "vacant." The taxpayer alleged two errors on appeal: (1) that the Cook County BOR violated the uniformity clause of the IL constitution by failing to allow taxpayer an assessment reduction based on a claim of vacancy, when it has a policy of automatically granting reductions based on claims of vacancy alone; and (2) the PTAB erred by refusing to permit taxpayer's attorney from giving expert testimony on the county's policies and procedures. The Appellate Court rejected both contentions.

As to the first contention, the Court noted evidence in the record regarding Cook County's Official Rules clearly require taxpayers to file affidavits setting forth the duration and reason for the vacancy and the attempts to lease the property, whereas the taxpayer failed to provide such information. *Id.* at 528-29. The Court evaluated and distinguished other cases where reductions based on vacancy were granted based on different evidence in those cases.

As to the taxpayer's assertions of error over the PTAB's refusal to allow his attorney to testify as an expert witness on the Cook County BOR's policies and procedures, the Court concluded that the PTAB did not abuse its discretion, noting that the attorney did not have experience working for the assessor or the BOR and did not have personal experience as to the internal policies and procedures at issue. The Court distinguished this case from *Board of Educ. Of Gibson City-Melvin-Sibley Community Unit School District No. 5 v. Property Tax Appeal Board*, 822 N.E.2d 550 (Ill. Ct. App. 2005) where the supervisor of assessments had been qualified as an expert and had personal experience and knowledge of the assessor's policies and procedures in not assessing machinery and equipment as real estate. *Id.* at 531.

**<u>Developers Beware – Plat Timely To Avoid Reclassification</u>**

***Sycamore Comm. Unit Sch. Dist. No. 427 et. al. v. Illinois Property Tax Appeal Board***, 2014 WL 2873895 (Ill. Ct. App. June 24, 2014) – Opinion Not Released for Publication.

This case involves a fairly complicated set of facts over a several year period, not all of which are set forth below because they are not necessary to an understanding of the key points of the decision. The case involves 35 ILCS 200/10-30 of the Property Tax Code, which is known as the "developer's relief" provision. This provision was enacted to "protect real estate developers from rising assessments that result from the initial platting and dividing of farmland." *Id.* at *7 (citing *Grundy County National Bank v. Property Tax Appeal Board*, 697 N.E.2d 921 (Ill. Ct. App. 1998). In a typical case, where a developer plats farmland and the farmland is subsequently reclassified as nonfarmland (or residential, etc.), the provision operates to ensure that the property continues to be assessed at the preferential farmland rate. *Id.* at *8.

In 2005, the taxpayer attempted to plat and subdivide farmland property. In 2006, the Assessor reclassified the property as nonfarmland, resulting in a substantial assessment increase. Subsequently, the taxpayer platted and subdivided the property in 2007, and challenged the reclassification. In 2008, the Assessor again classified the property as nonfarmland. On appeal, the PTAB held that the developer's relief program applied to taxpayer's property and precluded the assessor's 2008 reclassification. The Appellate Court reversed.

Discussing the "developer's relief" statute in detail, the Appellate Court concluded that the taxpayer could <u>not</u> benefit from the provision because he waited until <u>after</u> the assessor reclassified the property (in 2006) to plat his property/ development. The Appellate Court observed that the discount applies only to property that has been "platted" prior to the change in the property's classification (from farmland to a different use) and, in this case, the Taxpayer failed to observe the statutory niceties and plat his property prior to the assessor's 2006 reclassification. The lesson: the developer's relief statute "protects those

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developers who timely plat and subdivide property for residential development." *Sycamore* at ¶ 37 (citing *Mill Creek Development, Inc. v. Property Tax Appeal Board*, 345 Ill. App. 3d 790, 795 (Ill. Ct. App. 2003). Developers who wait until a later year to plat and subdivide land risk losing the benefit afforded by the developer's relief provision.

**Final Thoughts**

While the foregoing decisions turned on evidence that might seem inconsistent, a few themes emerge from the courts' approaches to the cases. First, in cases where the primary challenge involved (or, rather, the Appellate Court viewed the challenge as contesting) the PTAB's conclusion of value based on conflicting expert testimony, the appellants generally lose. In all decisions, the Appellate Court gave substantial deference to the PTAB's analysis of witness credibility and weight of the evidence. Second, where assertions of legal error were at the heart of the appeal – as with the challenge to the interpretations of the scope of exemptions (e.g., developer's relief provision and open space exemption) – the Appellate Court was far less deferential and was willing to reverse the PTAB. While the appellants in all of the cases tried to cast the appeal as involving legal issues (*e.g.,* contending the PTAB's analysis was so flawed that it amounted to the use of an impermissible valuation methodology), the Appellate Court generally characterized such issues as a challenge to the weight of the evidence. Finally, in terms of the "substantive" PTAB decisions reviewed, the seemingly inconsistent results in a few cases – e.g., the PTAB's conclusion that out-of-market sales were persuasive in one case but not in another case – seems to underscore, once again, that the real battle takes place in PTAB proceedings, well before the case reaches the Appellate Court.