

April 2011

Although assessment appeals have doubled and tripled in recent years, PA 096-1083 will undoubtedly further increase the number of assessment appeals.

THE INCREDIBLE SHRINKING TAX BASE FOR 2011 TAXES

Public Act 096-1083 Could Give Rise to Increased Assessment Appeals.

For school districts and other units of local governments that rely upon property taxes for substantial portions of their funds, a new law, Public Act 096-1083, could have a significant impact on assessment appeals, tax refunds and available revenue. The Illinois legislature last summer enacted Public Act 096-1083 which requires assessment officials to consider “compulsory sales” when making their assessment decisions for the 2011 tax year and into the future. In a time when property values are already reported to be hitting record lows, this recently enacted legislation is likely to further decrease the taxable value of property in Illinois.

In order to value properties for property tax purposes, assessment officials typically look at the sales price of comparable properties to make their valuation decisions. The Illinois Property Tax Code states that when applying this sales comparison valuation technique, assessors must value properties based upon the properties’ “fair cash value.” 35 ILCS 200/9-145 (2011). The Code defines “fair cash value” as the “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 200/9-145 (emphasis added). The new legislation, Public Act 096-1083, seemingly contradicts this definition. This is because the new law amends the Property Tax Code by requiring assessment officials to consider “compulsory sales” when valuing property. The statute defines “compulsory sales” to include sales that are most often thought to be

consummated under duress, such as short sales, foreclosure sales and bankruptcy sales. Thus, assessment officials must on the one hand assess properties as “sold in the due course of business” and “not under duress,” but at the same time they must consider the sales of properties sold under extreme circumstances and often at below market rates. At this time, it is unclear how assessment officials will reconcile these two seemingly opposing requirements.

Included within the new legislation is the requirement that the Illinois Property Tax Board (PTAB) “consider compulsory sales of comparable properties for the purpose of revising and correcting assessments.” This is important because when the PTAB reduces an assessment property taxes have already been paid. Therefore, any reduced assessment is credited to the taxpayer in the form of a refund taken from the taxing bodies’ revenue, with interest. Because of PTAB’s backlog, an assessment dispute may take 5-10 years to resolve, so even a relatively small reduction may result in a substantial refund when applying the typical interest rate of approximately 5% per year.

Although assessment appeals have doubled and tripled in recent years, PA 096-1083 will undoubtedly further increase the number of assessment appeals. Accordingly, units of local government are encouraged to get involved in the assessment and the assessment appeal

process in order to minimize the damage resulting from the reductions in assessed value that are likely to result from Public Act 096-1083. Units of local government can get involved and defend their revenue by intervening at the County Board of Review, which determines assessments before taxpayers pay their taxes. By intervening at this level taxing bodies are placed in the advantageous position of being able to monitor the appeal process, submit evidence and negotiate settlements. This is important because in most Counties assessment reductions that result from matters that are resolved at the Board of Review will be redistributed to the entire tax base without any refund or impact on the school district's finances.

If intervening at the Board of Review is not practical, or a case cannot be resolved at that level, then units of local government should intervene in the State

PTAB appeals. Pursuant to Illinois law, taxing bodies have the right to receive notice and intervene in PTAB appeals initiated by taxpayers within their district boundaries. Intervention in a PTAB proceeding can be extremely advantageous for a taxing district wishing to preserve its taxable property base, minimize tax refund liability and prevent future objections. After a taxing district has intervened in a PTAB proceeding, the taxing district is entitled to present its own appraisal evidence and expert witness testimony, and rebut evidence introduced by the taxpayer claiming that the property at issue is overvalued, including evidence of compulsory sales that will now be considered permitted under Public Act 096-1083.

Scott L. Ginsburg, of the firm's Chicago office, prepared this *InBrief*.

© 2011 Robbins Schwartz Nicholas Lifton & Taylor, Ltd.

This newsletter is published periodically by Robbins Schwartz Nicholas Lifton & Taylor, Ltd. Although the information contained in this publication is considered accurate, it is not, nor should it be construed to be, legal advice. If you have a problem or experience an incident that involves a topic addressed in this publication, please seek a legal opinion that is based upon the facts in your specific case. Questions and comments about this publication and address changes should be directed to the Publications Editor.

Robbins Schwartz Nicholas Lifton & Taylor, Ltd.

55 West Monroe Street | Suite 800 | Chicago, Illinois 60603 | 312-332-7760 | questions@rsnlt.com.