UNITED STATES - March 2017

$540,701,000,000: U.S. PROPERTY TAXES HIT RECORD IN 2016 ................................................................. 2
ILLINOIS SUPREME COURT REVIVES CHARITABLE PROPERTY TAX EXEMPTIONS FOR ILLINOIS HOSPITALS UNDER 2012 LAW DECLARED UNCONSTITUTIONAL IN 2016 ................................................................. 4
EXXON'S $9B PLANT GETS TEXAS TAX BREAK .............................................................................................................. 5
SHOULD BIG-BOX STORES PAY MORE PROPERTY TAXES? ....................................................................................... 7
FLORIDA - DISNEY AND UNIVERSAL SUE TO LOWER PROPERTY TAX BILLS ................................................................. 8
MICHIGAN - NEW LAW WOULD CHALLENGE MICHIGAN'S BIG BOX STORES SEEKING LOWER TAX RATES ............ 9
KENTUCKY - WALGREENS LOSES TAX LAWSUIT THAT COULD HAVE COST KENTUCKY SCHOOLS MILLIONS ........ 10
WISCONSIN - BIG BOX STORES GIRD FOR BATTLE WITH WISCONSIN CITIES .............................................................. 11
TEXAS - COAL PLANT SHUTDOWNS: THE TAX APPEAL SHOULD NOT WAIT ............................................................ 12
PENNSYLVANIA SUPREME COURT TAKES UP ISSUE OF REVERSE PROPERTY TAX APPEALS ACROSS STATE .... 13
OKLAHOMA - PROPERTY TAX RELIEF A POSSIBLE SOLUTION FOR HUMAN-MADE EARTHQUAKES .................. 14
NEW YORK - REVAL REVOLT! ......................................................................................................................................... 15
ILLINOIS - LEGAL BILLS EXCEED $1M IN GCMS'S PROPERTY TAX DISPUTE WITH ONE EARTH ENERGY ........ 17
ILLINOIS HAS HIGHEST OVERALL TAX BURDEN IN THE NATION ............................................................................. 18
OHIO SUPREME COURT RULES ON $14M COCA-COLA PLANT APPRAISAL ............................................................ 19
WISCONSIN - COMMUNITIES PUSH BACK AGAINST BIG BOX STORES' TAX CHALLENGES ................................... 20
TEXAS - DO THE COSTS OF PROPERTY TAX REFORM OUTWEIGH THE BENEFITS? ........................................ 20
OFFICIALS SEE TAX-INCREMENT FINANCING AS TOOL FOR ECONOMIC DEVELOPMENT .............................................. 22
PENNSYLVANIA - PORTAGE CONSIDERS ENACTING TAX ON VACANT CHURCHES TO PREVENT BLIGHT ........ 23
OREGON - LEGISLATURE LOSES CREDIBILITY ON PROPERTY TAXES .................................................................... 25
MICHIGAN - PENDING APPEAL IN MICHIGAN SUPREME COURT MAY WARRANT FILING A PROTECTIVE PROPERTY TAX APPEAL THIS YEAR ................................................................................................................ 26
MAINE - OIL PIPELINE SEEKS TAX ABATEMENT IN SOUTH PORTLAND ........................................................................ 27
INDIANA - COURT REJECTS PROPERTY TAX EXEMPTION FOR PORTAGE STEELWORKERS HALL .................... 28
ILLINOIS 2ND HIGHEST STATE IN PROPERTY TAXES .................................................................................................. 29
TEXAS - PROPERTY TAX: HIGH COURT FINDS COMPONENTS OF OIL REFINERY ASSESSMENT CAN BE COMPARED 29
PENNSYLVANIA - DON'T LIKE PAYING PROPERTY TAXES? WHO DOES? ............................................................... 30
NEW JERSEY - NEW FARMLAND ASSESSMENT REVEALS 'FAKE FARMERS' STILL GETTING TAX BREAKS ........ 31
$540,701,000,000: U.S. Property Taxes Hit Record in 2016

Americans paid a record $540,701,000,000 in property taxes to state and local governments in fiscal 2016, according to the U.S. Census Bureau.

That was up $16,748,620,000—or about 3.2 percent—from $523,952,380,000 in property taxes (in constant 2016 dollars) that state and local governments collected in fiscal 2015.

The prior national record for property taxes was set in fiscal 2009, when they hit $527,850,500,000 in constant 2016 dollars. Fiscal 2016's record total of $540,701,000,000 was up $12,850,000,000—or about 2.4 percent—from that previous record.

The nationwide state and local property tax receipts for fiscal 2016 were released last week with the Census Bureau’s “Quarterly Summary of State and Local Government Tax Revenue for 2016: Q4.”
The fiscal year 2016 that the Census Bureau references in this data is the year that runs from July 1, 2015 to June 30, 2016. That is because most states end their fiscal years on June 30.

The Census Bureau defines “property taxes” as “taxes imposed on ownership of property and measured by its value.”

“Property,” says the Census Bureau, “refers to real property (e.g., land and structures) as well as personal property; personal property can be either tangible (e.g., automobiles and boats) or intangible (e.g., bank accounts and stocks and bonds).”

Although total inflation-adjusted state-and-local property taxes hit a record in fiscal 2016, inflation-adjusted property taxes hit their per capita peak in fiscal 2009.

In fiscal 2016, the $540,701,000,000 in property taxes that state and local government collected equaled about $1,673 for every one of the 323,127,513 men, women and children the Census Bureau estimated were residing in the United States as of July 1, 2016.

In fiscal 2009, the $527,850,500,000 in property taxes (in constant 2016 dollars) that state and local government collected equaled about $1,721 for every one of the 306,771,529 men, women and children the Census Bureau estimated were residing in the United States as of July 1, 2009.
Most of the property taxes were collected by local governments. Of the $540,701,000,000 in total property taxes collected nationwide in fiscal 2016, according to the Census estimate, $16,040,000,000—or about 3 percent—was collected by state governments.

Illinois Supreme Court revives charitable property tax exemptions for Illinois hospitals under 2012 law declared unconstitutional in 2016

Last week the Illinois Supreme Court announced its much-anticipated decision in Carle Foundation v. Cunningham Township.[1] The court unanimously vacated the Illinois Appellate Court’s ruling that Section 15–86 of the Illinois Property Tax Code, [2] which governs charitable property tax exemptions for nonprofit hospitals, is unconstitutional, remanding the case to the circuit court for further proceedings.

The supreme court’s opinion was premised on purely jurisdictional grounds; it did not address the constitutionality of Section 15–86 on the merits. But for now, subject to another much-anticipated decision by the appellate court in Oswald v. Hamer, [3] there is renewed certainty that hospitals seeking charitable property tax exemptions can invoke Section 15–86.

The developments leading up to Carle

The Carle decision cannot be viewed in isolation. It is one piece of an evolving legal framework that dates back at least as far as 2002.

At that time, a controversy erupted over whether, to qualify for a charitable exemption, the Illinois Constitution’s charitable-use test required hospitals to provide a specific amount of so-called “charity care”—i.e., free or discounted services to low-income individuals.

The issue came to a head in 2006 when the Illinois Department of Revenue (DOR) denied Provena Covenant Medical Center a charitable exemption based on the small percentage of Provena’s charity care compared to its overall budget.

Fast forward to 2009, when the supreme court decided the appeal from the DOR’s decision in Provena Covenant Medical Center v. Department of Revenue. [4] In Provena, a majority of the court held that, based on the evidence of record, the DOR properly concluded that the property in question was not owned by a charitable institution and therefore was not entitled to a charitable exemption under the statutory test for charitable ownership [5] The court reached no majority on the proper test for deciding whether a hospital satisfies the Illinois Constitution’s charitable-use requirement, a separate analysis from the statutory test.[6]

In the wake of Provena, the Illinois General Assembly enacted Section 15–86 to address the lingering uncertainty over charitable exemptions for nonprofit hospitals. Section 15–86 was intended “to establish a new category of ownership for charitable property tax exemption” [7] in which a hospital could satisfy the conditions for exemption if “the value of services or activities” enumerated in the statute “exceed[ed] the relevant hospital entity’s estimated tax liability” for the year in question.[8]

The Carle litigation, which began in 2007, involves an exemption request for four parcels of land in Urbana, Illinois. Because the litigation was pending at the time Section 15–86 took effect, the plaintiff requested an exemption under the statute. Ultimately, the case resulted in an interlocutory appeal from the circuit court’s determination that Section 15–86 applied to the plaintiff’s exemption request.

On appeal, after addressing a number of threshold questions, including its jurisdiction to hear the appeal, the appellate court declared Section 15–86 facially unconstitutional.[9] The court reasoned that Section 15–86 impermissibly grants charitable exemptions “on the basis of an unconstitutional criterion, i.e., providing services or subsidies equal in value to the estimated property tax liability . . . without requiring that the subject property be ‘used exclusively . . . for charitable purposes,’” as required by the Illinois Constitution.[10] The court’s decision resulted in an appeal as of right to the Illinois Supreme Court.

While the Carle appeal was pending before the supreme court, the appellate court issued its decision in Oswald. There, unlike in Carle, the court held that Section 15–86 is facially constitutional, reasoning that the statute need not expressly incorporate the constitutional charitable-use standard for that standard to apply.[11]
The appellate court recently heard oral arguments on the plaintiff’s petition for rehearing. It remains to be seen whether the Oswald court will modify its original opinion in any way. And once its judgment becomes final, the losing party will have 35 days to file a petition seeking leave to appeal the judgment to the Illinois Supreme Court.

The Illinois Supreme Court’s decision in Carle

It was against this backdrop that the supreme court issued its decision in Carle. The court’s holding is relatively straightforward: the Illinois Appellate Court had no jurisdiction to hear an interlocutory appeal from the entry of a declaratory judgment finding that Section 15–86 applied to the plaintiff’s exemption claims. The court reasoned that, as a matter of appellate procedure, there was no final disposition of an appealable claim. Therefore, the supreme court vacated the appellate court’s decision in its entirety.

There are a number of nuances to the court’s jurisdictional analysis. But in the end, the result is what’s key. For hospitals seeking to plan their exemption requests, Section 15–86 is again a viable option, subject to the disposition of any petition for rehearing in Carle and the final disposition of the Oswald case.

What Carle does not do

Carle was expected by some observers to settle once and for all the legality of Section 15–86, clarify the distinction between the statutory and constitutional tests for charitable property tax exemption and articulate the exact contours of the constitutional test. And although it does provide short-term guidance on whether Section 15–86 remains in effect, it leaves a number of questions unanswered. Most significantly:

The decision does not address the constitutionality of Section 15–86 on the merits. It is not yet known whether any of the litigants in Carle will file a petition for rehearing. Even if they do not, this issue may arise again on remand. It also remains the subject of the Oswald litigation, which could, in time, end up before the Illinois Supreme Court.

The decision does not address the constitutional charitable-use test that Illinois nonprofit hospitals must satisfy to qualify for property tax exemption under the Illinois Constitution. That test has remained uncertain and opaque since the Illinois Supreme Court’s 2009 decision in Provena.

As hospitals await further clarification on these issues, circuit courts will be obliged to follow the existing opinion in Oswald, and Section 15–86 will remain the law in Illinois.

2. 35 ILCS 200/15–86.
4. Provena Covenant Med. Center v. Dep’t of Revenue 236 Ill. 2d 368 (2010).
5. Id. at 390–93, 411–12.
6. Id. at 412–17 (Burke, J. & Freeman, J., specially concurring in part and dissenting in part).
7. 35 ILCS 200/15–86(a)(5).
8. 35 ILCS 200/15–86(c).
10. Id.
13. Id., ¶ 23.

Exxon’s $9B plant gets Texas tax break

Exxon Mobil Corp. and its Saudi partner were granted an estimated $1.2 billion in tax breaks over 10 years from a south Texas school board to build a $9.3 billion petrochemical plant just north of Corpus Christi.

Defying community opposition, the Gregory-Portland Independent School District’s board unanimously approved the tax package late Tuesday.
It's trying to entice Houston-based Exxon and partner Saudi Arabia Basic Industries Corp. to build what would be the world's largest ethane steam cracker plant less than 2 miles from Portland's high school.

The joint venture, which promises thousands of jobs, on Monday got the green light and a separate package of tax incentives worth roughly $210 million over seven years from San Patricio County.

"We're the school board and I thought we were supposed to be educating our kids, but it seems like we're in the middle of economic development," Randy Eulenfeld, the board's president, said during the four-hour meeting. "We will take this responsibility and do the best that we can."

After the final vote was tallied, Eulenfeld said he was "relieved that this part is over and that we can talk about something else."

While the value of the completed project is estimated at $9.3 billion, the school district agreed to limit the taxable value at $90 million for 10 years starting in 2024 when the plant is scheduled to open.

That reduces the school district's potential new tax revenue from the petrochemical plant from an estimated $120.9 million per year to less than $1.2 million per year, according to a copy of the plan.

The companies, which still need state approval, also are looking at a site in Victoria and two in Louisiana, but the San Patricio County location is leading the pack, project leader Robert Tully said in January.

The ethane cracker plant uses high heat and pressure to break down natural gas into ethylene and polyethylene -- the base chemicals used in plastics.

The proximity of the crackers to the high school has rankled some residents since news of the plans surfaced a few months ago.

Exxon has borne the brunt of the criticism from the opposition, specifically from Portland Citizens United, a grass-roots organization that turned in a petition Tuesday with more than 1,500 signatures opposing the plant. But both companies were under the gun Tuesday.

"They are bullying this county, they're bullying you ... we don't allow bullies in our schools," Errol Summerlin, who signed the petition, said at the meeting. "We shouldn't tolerate it from them."

Jason Mutschler, who spoke against the project, got emotional after the county and School Board votes.

"I don't like the vote; I hate the vote," Mutschler said, though he added that the board members "did their due diligence" better than the county.

He said Portland Citizens United, which he is a member, plans to contest the companies' permit applications with the Texas Commission on Environmental Quality. Exxon's Tully said the company hopes to submit the applications soon.

School Board member Victor Hernandez repeatedly asked Tully what the company would do for homeowners near the site who could have trouble selling their homes if the state approves the plant.

Tully said Exxon has a program to compensate homeowners for reduced property values.

The company will buy properties that have a hard time selling for up to six years after the permits are issued. He said an outside company would run the program, valuing homes as if the plant wasn't there.

"If we do choose the Gregory-Portland site as our location, I want to assure you that we will follow through with our Good Neighbor Commitments on health and safety, quality of life, education and workforce development, and being good environmental stewards," Tully wrote in an email sent to residents Wednesday evening.

He said project managers have held more than 80 meetings with the community.

"Many of those meetings were encouraging and supportive, while others were pretty tough, to say the least," he said.

The debate got personal at times.
School Board secretary Carrie Gregory said she was disappointed that some had engaged in "character assassination" over the past few months. Fred Nardini, Portland’s county commissioner, said Monday morning that he and his family were personally attacked over the debate.

The tax breaks are contingent on job creation. Plans submitted by project leaders to the Texas Comptroller’s Office commit to creating 13,570 temporary construction jobs at average annual wages of $87,500 and 170 permanent jobs at average annual wages of $59,408.

**Should big-box stores pay more property taxes?**

LANING — Municipalities that are collecting substantially lower property taxes than they used to from big-box stores must overcome opposition from business interests and their allies in the Legislature to tilt the tax assessing system back in favor of local governments.

The retailers have been successfully reducing their tax bills in the Michigan Tax Tribunal since 2010, when the administrative court began agreeing that the real estate should be compared to “dark,” or vacant, structures for tax purposes. Bipartisan House legislation reintroduced in the past week would restore fairness to the property tax appeals system, according to supporters who contend that the problem has reached crisis proportions especially in smaller communities unable to afford legal fights.

"Most of these stores, if they're assessed $2 million less than what they should be, they're saving a hundred grand a year," the sponsor, Republican Rep. David Maturen of Vicksburg, said after helping to unveil the bill at the Michigan Municipal League’s conference in Lansing. "Multiply $100,000 times every big-box store in this state and all of a sudden there's some major money out there. ... That should be going to police and fire and schools and every other service that's provided."

He cited examples in Kalamazoo County, where he said Costco spent $17.5 million to open a new store but argued it was worth $4 million and Menards spent $16.5 million for a store while contending it was worth $5.6 million.

The bill won overwhelmingly approval in the GOP-led House last year, 97-11, only to die in the Republican-controlled Senate. It would not necessarily have increased taxable values from existing levels, but it could have potentially prevented large reductions in future appeals, according to the nonpartisan House Fiscal Agency.

Municipal groups are leaning on lawmakers to address the "dark store" issue, but opponents include the powerful Michigan Chamber of Commerce and groups representing retailers, grocers and manufacturers.

Amy Drumm, vice president of government affairs at the Michigan Retailers Association, said the measure is unconstitutional and would slant the tax appeals process toward assessors. Big-box owners discovered after the Great Recession that their stores had been "dramatically overvalued" by local assessors in Michigan and across the country, she said. She said Michigan property typically is based on the true cash value, which is defined in law as the usual selling price.

"So we have to look at comparable sales, and most of these properties that are larger retail properties or manufacturing properties sell when they're vacant because that's when they go up for sale. You don't sell a thriving business typically," she said.

But Rep. John Kivela, a Marquette Democrat, said the retailers — which he characterized as "large out-of-state corporations" — are exploiting a loophole while smaller Main Street competitor businesses still must pay higher taxes.

"This is touching every corner of the state," he said, seeking to debunk a perception that the tax appeals primarily affect Upper Peninsula communities. He said it is "wrong" that businesses such as Wal-Mart, Menards and Home Depot are paying way less in taxes in Michigan than in the states where they are headquartered.

The bill's critics question if such comparisons to other states are apples to apples.

The renewed debate in Michigan, where the dark store strategy took hold before spreading elsewhere, comes as Wisconsin Republicans aim to close the so-called loophole. Indiana last year enacted a law to curb the tactic.
But with the legislation likely to stall in the Senate Finance Committee if it clears the House again, municipalities’ hopes may hinge on the Michigan Supreme Court.

Justices in February ordered arguments in a dispute between Escanaba and Menards. The state appeals court in 2016 ruled for the city and reversed the Tax Tribunal’s decision to use sales comparisons in a tax reassessment case instead of the cost of construction less depreciation, noting how deed restrictions prevent the reuse of many big-box store properties as retail space.

Maturen’s bill would limit the extent to which other similar properties could be used for comparison if they have deed restrictions. Deena Bosworth, director of governmental affairs for the Michigan Association of Counties, said the restrictions "artiﬁcially drive down demand for the property, thereby lowering the value."

FLORIDA - Disney and Universal sue to lower property tax bills

Cinderella’s castle, The Wizarding World of Harry Potter and Epcot’s 11-country World Showcase take up a lot of land -- and generate property taxes of comparable heft.

Orlando’s famous theme parks generate tax bills in the tens of millions of dollars. To cut them, the parks’ specialists have used methods from the creative to the traditional. That includes everything from negotiating or appealing to a county board to placing cows on undeveloped land in order to claim an agricultural exemption.

Over the past couple of years, however, such tactics aren’t quite doing the job. Property assessments and taxes have jumped — and so has the number of lawsuits the theme parks and other businesses have filed against Orange County’s property appraiser. That’s Rick Singh, who was re-elected to a second four-year term last fall despite the thousands of dollars in donations park officials gave to his opponent.

In lawsuits filed last year, the theme parks alleged Singh’s office didn’t use proper appraisal methodology. Walt Disney Parks and Resorts issued a statement describing assessments on some of its properties for 2015 as “unreasonable and unjustified.”

Beyond such terse statements, officials from Disney, the development arm of Universal Orlando and SeaWorld of Florida are saying very little about an issue they hope to resolve in court. But they have spoken loudly with their wallets. Groups affiliated with all three companies gave $19,000 to Singh’s Republican opponent. Singh, a Democrat, got only $5,000 from the groups. “There is a lot more value”

The backlash isn’t surprising, said Doug Head, chairman of the watchdog group Orange County Watch. Head said the appraiser’s position has traditionally been a cushy post for local politicos waiting to retire, but Singh is one of the first to have substantial professional training.

“He uses professional expertise, and he clearly figured out there is a lot more value than is properly being reﬂected,” Head said. “He did what he needed to do, and people accustomed to the way business was done weren’t happy.”

Singh said his methods for assessing properties are no different than those of his predecessors — except when looking at resorts and hotels. Then, he considers their income statements and the local “bed tax” paid by hotel customers, which he said his predecessor didn’t use. Income isn’t considered when assessing theme parks.

“It’s a matter of being fair and equitable,” Singh said. “If the single mother who is working two jobs has to be held accountable to pay her fair share, so should everybody else.”

“The most complex tax roll in the world”

The importance of the three theme parks to Orange County, which includes Orlando, can’t be overstated: The properties owned by Disney, Universal and SeaWorld are valued collectively at about $10.7 billion. Properties owned by the largest resort and timeshare companies are worth another $6.3 billion.

The three theme park companies pay 7 percent of the county’s property taxes — more than $135 million last year. That revenue helps to mitigate the impact of hosting 66 million visitors in 86,000 hotel rooms and 15,500 timeshare units every year, and to pay for law enforcement, schools, parks and public health programs. Disney also pays property taxes to a private government established by the Florida Legislature that provides the Disney parks and resorts with services including utilities, roadways and firefighters.
Property values for the theme parks, resorts and other large commercial properties are set by a team of almost two dozen of the county’s seasoned appraisers in what Singh calls “the most complex tax roll in the world” due to the constant growth.

Singh said the appraisers use a “cost approach” when evaluating theme parks. Tax bills go up not just from rising property values but also from new construction, which is constant at the parks.

“What does it cost to improve the land? What does it cost to build this? ... What is the labor cost? Factor in all that and then it depreciates, and that’s your cost approach,” he said.

But the results are meeting a wall of resistance. Last year, Disney, Universal and SeaWorld filed a dozen lawsuits against Singh’s office, the tax collector and the state Department of Revenue. Several other Orlando resorts also have sued.

The companies pay taxes only on their properties’ “assessed” values; the “market” values reflect what the properties could be sold for.

Lawsuit upon lawsuit
SeaWorld is fighting both the market and assessed values of its flagship SeaWorld Adventure Park, its Aquatica water park and Discovery Cove, an animal-encounter park. In a separate lawsuit the property appraiser’s office filed against SeaWorld in 2015, Singh’s office listed a market value of $192.5 million; SeaWorld listed it at $143.4 million.

Universal is disputing the market value of its 20,000-vehicle parking garage, which has nearly doubled in two years, from $148.6 million in 2014, to $297 million in 2016. The garage’s assessed value only went up 10 percent a year during that time, however, from $145 million to $175 million.

Disney is disputing the assessments of properties including four theme parks, 11 resorts and two water parks. An Associated Press tally of all the properties listed in the lawsuit shows that the appraiser gave them a total market value of more than $5 billion in 2015.

Disney, whose total properties in Orange County have a market value of $8.2 billion, is not saying publicly what it thinks the value should be. But the company’s tax bill from Singh’s office jumped from $84.5 million in 2014 to $97.2 million in 2015 to $102.6 million in 2016, an average increase of about 10 percent a year. Those numbers exclude what Disney pays its private government in property taxes.

“Similar to other property owners in Orange County, we have no choice but to take action to dispute these errors by the property appraiser,” Disney’s statement said.

MICHIGAN - New law would challenge Michigan’s big box stores seeking lower tax rates

Multiple municipalities in Michigan are uniting behind a state bill seeking to close the tax loophole that allows the largest retailers to reduce property taxes to the level of an empty building - despite still operating.

Some estimates say the losses to Michigan communities is about $100 million since 2013.

House Bill 4397 would require the Michigan Tax Tribunal - when it hears challenges to local property tax assessments - to apply "standard appraisal procedures when reaching their findings of facts and conclusions of law in larger property tax cases."

The so-called "dark store" legislation was reintroduced on March 21, is sponsored by Rep. David Maturen, R-Brady Township, and it's backed by a bipartisan group of 54 House members.

A similar bill was introduced in 2016, and it passed the house by a vote of 97-11. However, it didn't advance from the Senate finance committee and didn't have a hearing.

It’s an issue in Escanaba, where the city and Menards has been battling over an estimated $8 million tax valuation, which was appealed to the Michigan Tax Tribunal in 2014. The tribunal decided with Menards, which said its open store should be taxed at a rate closer to $3 million, based on the sale of closed "big box" stores around the state.
One issue, said Menards, is the obsolescence of the stores, which according to dark-store theory should be taxed as if they're vacant - due to the difficulty of repurposing them.

The Escanaba-Menards battle may be heard in Michigan’s Supreme Court.

Meanwhile, the tax tribunal is hearing appeals from dozens of other retailers across the state. Files show that Menards, for example, has been through appeals in 20 communities.

"This really is an issue statewide," said Frank Walsh, manager of Meridan Township, east of Lansing.

Walsh said during a news conference organized by the Michigan Municipal League that his community is welcoming a new Costco store, along with the jobs its bringing. He said the store is investing in the community, which will be expected to respond with public services.

However, an anticipated request for a tax break - not based on the cost of the land or the construction value of the building, but of an empty shell of a warehouse store - puts all of the other township businesses that pay the assessed tax at a disadvantage.

"It's about fairness," Walsh said. "We're not asking them to pay more than their fair share."

Walsh's concern about Costco is not unfounded: Multiple appeals by Costco are on the tax tribunal's dockets.

One appeal from 2016 from Pittsfield Township, near Ann Arbor, shows that the retailer wanted its taxable value trimmed from $6.8 million to $3 million. The township and retailer reached an agreement to set the value at $5 million, which was approved by the tribunal.

Other stores that have used the dark store theory on tax appeals in the state include Home Depot and Target.

"The 'Dark Store' theory has left communities throughout Michigan with an unbalanced property tax system that unfairly burdens small businesses and homeowners," said Judy Allen, director of government relations for the Michigan Townships Association. "Rep. Maturen's bill provides Michigan with a legislative solution that levels the playing field for all taxpayers."

However, getting the bill to pass into law is the next hurdle, said municipal leaders at the press conference. The state Senate, at this point, is not attuned to the issue.

But communities are vowing to press forward.

"We're going to take this fight as far as we have to go," Walsh said.

KENTUCKY - Walgreens loses tax lawsuit that could have cost Kentucky schools millions

Walgreens contested the property tax bill on its Nicholasville Road property, which became a test case for the state. A Fayette circuit judge ruled that the methodology used to value the property was correct, and the Kentucky Court of Appeals and Supreme Court upheld that ruling.

The Kentucky Supreme Court declined this month to hear an appeal brought by Walgreens Co., presumably ending a longstanding legal battle between the pharmacy chain and Fayette County officials that threatened to strip hundreds of millions of dollars from Kentucky’s school districts.

The court’s March 15 decision to deny Walgreens’ motion for review will benefit school districts statewide, Fayette County Property Valuation Administrator David O’Neill said.

Walgreens wanted Kentucky’s high court to review a 2016 Court of Appeals opinion that O’Neill had properly assessed the value of the Walgreens pharmacy at 2290 Nicholasville Road. The appeals court had upheld a 2015 decision by then-Fayette Circuit Judge Tom Clark.

International Property Tax Institute

IPTI Xtracts - The items included in IPTI Xtracts have been extracted from published information. IPTI accepts no responsibility for the accuracy of the information or any opinions expressed in the articles.
If O’Neill had lost the case, the potential change in how PVAs assess commercial property could have cost Kentucky’s 173 public school districts hundreds of millions of dollars.

“While I was confident that our methodology was sound and correct, it still had far-reaching implications across the state and to all of our school districts,” O’Neill said. “It’s a tremendous relief to finally have this settled.”

In its lawsuit, Walgreens contended that Kentucky PVAs use the wrong methodology to determine the value of its stores, resulting in inflated values and unfairly high tax bills. Statewide, Walgreens had appealed the valuation on most of its approximately 94 stores to the state board of tax appeals, O’Neill said.

Walgreens’ store on Nicholasville Road is worth $5 million, according to O’Neill, but the company had contested its property tax bill for five previous years, paying the taxes as though the store was worth $3.4 million.

That, combined with similar appeals for six other Walgreens in Fayette County and multiple other appeals by other businesses, amounted to a $660,000 loss for Fayette County Public Schools. The companies must now pay the taxes they withheld, plus interest, O’Neill said.

Overall, a variety of Lexington agencies that rely on property taxes for funding, including the public library system and Lextran, could get about $1 million in new tax revenue as a result of the final ruling, said O’Neill and Richard Vimont, a civil attorney for the Fayette County Attorney’s office.

O’Neill said his office and Fayette County Attorney Larry Roberts’ office “stepped up to take this case on behalf of the entire state.”

“It’s far-more reaching than Walgreens,” O’Neill said. “It’s any number of national chains.”

The 2015 ruling in Fayette Circuit Court said the method O’Neill used to value the property “was not arbitrary or capricious, nor was it clearly erroneous.”

The appeals court concurred, saying, “While Walgreens demonstrated an alternative method for assessing the property, it failed to present convincing evidence that the PVA’s assessment overvalued the property.”

There are three accepted practices for determining a property’s value:

- For a residential property, PVAs usually base their estimates on comparable sales in a given neighborhood.
- For a new commercial property, PVAs sometimes look at the cost of construction.
- For an existing commercial property, PVAs usually determine a value by calculating how much income it can generate. In other words, what could a real estate holding company collect by renting the property over time to a corporation, such as Walgreens?

Walgreens contended that its stores should be assessed based on the sales price of comparable properties, not its cost to lease the stores.

Phil Caruso, a spokesman for Walgreens, declined to comment on the Supreme Court’s decision.

Caruso has previously defended the company’s appeal, saying Walgreens was behaving “like any taxpayer who believes their real estate assessment is excessive.”

Read more here: http://www.kentucky.com/news/local/education/article140072383.html#storylink=cpy

WISCONSIN - Big box stores gird for battle with Wisconsin cities

A battle pitting big-box retail giants including Menards and Wal-Mart against Wisconsin towns and cities is headed to the Legislature.
Republican-backed proposals, written in conjunction with the League of Wisconsin Municipalities, are designed to close the so-called dark store loophole and increase how much the mega-retailers pay local communities in property taxes.

The bills come in reaction to court rulings in Wisconsin and nearby Midwestern states — starting in Michigan — that have helped the retail giants lower the value placed on their stores for levying property taxes. The retailers have successfully challenged their tax assessments in communities across Wisconsin, and the Midwest, by arguing they are overtaxed and should pay the same rate as a store that is closed and vacant.

That results in a shift of the property tax burden to smaller retail stores and property owners, said Jerry Deschane, executive director of the League of Municipalities.

“We just think that’s fundamentally unfair,” he said. “The bottom line with the property tax is it has to be uniform.”

The cities will have to overcome opposition from the powerful state chamber of commerce and deep-pocketed retail giants that stand to lose millions from a change in current practice.

Wisconsin Department of Revenue rules require that assessments be based on the fair market value of a property. The stores argue that the value of the underlying real estate should be determined by looking at comparable building sales, prices that usually fall far below the assessment of an operating store.

Assessing the building as if it were empty has long been the standard in Wisconsin for determining its value, said Don Millis, a Madison attorney who has represented Target and other retailers in assessment challenges. Millis is also lobbying for the Wisconsin Manufacturers and Commerce against changes to the law.

“You value the sticks, bricks and mud,” Millis said. Cities have been incorrectly assessing the property based on the potential lease value, he said.

“We don’t think they’re being undervalued,” he said. “We think assessors are being overly aggressive.”

But Republican state Sen. Duey Stroebel, who plans to introduce a bill next month addressing the issue, said the potential lease value of the property should be considered when valuing it for tax purposes. That is what the bill he and others are working on will do, he said.

Millis warned that changing the law “could have long-term unintended consequences” affecting how all property is valued.

Big box stores including Menards, Lowe’s and ShopKo have filed more than 20 lawsuits against Wisconsin municipalities in the past year challenging their property assessments.

In one, Menards successfully argued last year that the value of its store in Fond du Lac assessed by the city at $9.2 million should be no more than $5.2 million. A similar lawsuit from Target argues that Fond du Lac should reduce its taxes on the retailer by about a third.

The dilemma for small cities is that the cost of defending lawsuits can equal or exceed the amount of property tax revenue at play, so they are more inclined to settle than fight it, said Deschane, who’s with the League of Municipalities.

Lawmakers in nearby states have had mixed success in tackling the issue.

A proposal in Michigan that attempted to require the taxable value to be based on the highest and best use of a property failed to pass last year. But in Indiana, the Republican-controlled Legislature, along with then-Gov. Mike Pence, enacted legislation to block what opponents call a tax loophole. The Wisconsin bill is modeled after the Indiana law.

TEXAS - Coal Plant Shutdowns: The Tax Appeal Should Not Wait

Nothing is certain except death and taxes, unless you own a coal-fired power plant with a shutdown in its future, in which case — with apologies to Ben Franklin — we would also add the certainty of a property tax appeal. Host communities typically rely on the hefty annual check paid by electric power plants for local property taxes. Obviously, if and when the plant shuts down, that

International Property Tax Institute

IPTI Xtracts - The items included in IPTI Xtracts have been extracted from published information. IPTI accepts no responsibility for the accuracy of the information or any opinions expressed in the articles.
check will be smaller. Before the breakers have been thrown, however, plant owners and operators can significantly reduce the cost of doing business by taking steps to reduce their property taxes.

In most states, property taxes are assessed by a local authority, based on the fair market value of the property and any improvements. How, then, is the value of industrial property that hosts a power plant determined? Generally, the price a reasonable seller of property will get from a reasonable buyer in an arms-length transaction is its fair market value. In some states, particularly those that regulate power generation, revenue-producing assets such as a coal-fired power plant are valued based on the amount of revenue the assets generate. In other states, the cap on the value of a plant is the amount a buyer would pay to build a replacement. Other states value a plant based on the actual sales prices of comparable units.

As the national energy resource mix has moved from coal (and oil) to natural gas, both the revenue generated by coal plants and their value in the market has dropped. Regardless of the manner of valuation, assessors can reasonably conclude that coal plants – and the equipment used to run them – may be worth less than the amounts they are currently assessed for property taxation purposes.

It is not just older plants lacking expensive pollution controls that are ripe for reassessment. The Sandy Creek coal-fired power plant near Waco, Texas, was completed in 2013 at a total cost of almost $2 billion and appraised by the local tax district at $900 million in 2014 and $1.7 billion in 2015. In 2005, when planning for the Sandy Creek plant started, the “fracking” revolution had not yet begun, and there was no reason to expect natural gas prices to drop. Despite the significant investment to build the plant, and the devastating impact of a reduced valuation on the local school, community college, and county budgets, a jury found that by 2016, the plant was only worth half of its initial appraised values.

Unless a complete re-valuation is planned by the local taxing authority, the only way to reduce local property taxes is to file an appeal. This may alienate the local community. We have, in earlier alerts, encouraged engagement between the owners and operators of coal plants and the local community, because such engagement may facilitate reasonable remediation obligations as the former coal plant properties are redeveloped. But, even if that strategy is adopted, a plant owner’s right to challenge the plant’s tax assessment is a valuable right that cannot be ignored. At the very least, a plant owner needs to know by how much the owner could reduce costs.

Thus, owners of coal plants (even if their plants are not scheduled for shutdown) should consult a tax appeal lawyer to review their assessments to determine whether filing an appeal is appropriate.

Pennsylvania Supreme Court Takes Up Issue of Reverse Property Tax Appeals Across State

Pennsylvania property owners and tenants, who pay some of the highest property taxes in the nation, are no doubt aware of the annual deadline to file a property tax appeal. After all, one look at a new tax bill is often enough to make even the most seasoned tax manager scramble to contact their local tax counsel.

However, very few taxpayers are aware that the assessment they may have accepted as favorable could easily trigger a reverse appeal filed by the local school district.

Assessment appeals filed by the taxing entities, often referred to as reverse appeals, are increasingly common as cash-strapped school districts seek to fill their coffers. Just as a tax manager might view an inflated assessment as a reason to appeal, more and more school districts see potentially under-assessed properties as a much-needed source of additional revenue.

To the bane of many taxpayers, this tactic has now reached the city of Philadelphia. Despite undergoing a citywide property revaluation for the 2014 tax year, with another currently slated for 2018, the Philadelphia School District recently decided to begin filing reverse appeals against properties it feels are under-assessed.

On Sept. 15, 2016, for the first time, the school district authorized the superintendent to contract with an outside law firm for the sole purpose of filing reverse appeals on the district’s behalf. It also authorized the superintendent to contract with Keystone Realty Advisors LLC, a real estate valuation and advisory group that will serve as the primary identifier of under-assessed properties in the city.

Changes a long time in the making

International Property Tax Institute

IPTI Xtracts- The items included in IPTI Xtracts have been extracted from published information. IPTI accepts no responsibility for the accuracy of the information or any opinions expressed in the articles.
To many in the world of tax appeals, the emergence of reverse appeals in Philadelphia was unsurprising and inevitable. Keystone had previously peddled its services in a number of other Pennsylvania counties, including Lackawanna and Luzerne. Additionally, last year the Philadelphia School District hired Uri Monson to fill the vacant chief financial officer position. Monson previously served as chief financial officer for Montgomery County, another Pennsylvania county that saw a number of school districts utilize Keystone’s services to identify potential reverse appeals.

In Philadelphia, Monson says the reverse appeal initiative will focus on properties that are undervalued by at least $1 million. City Councilman Allan Domb has indicated that there may be up to $75 million in untapped revenue from commercial properties alone. The school district, which receives 55 percent of the city’s total property tax revenue, stands to gain up to $41 million.

According to Monson, reverse appeals are a tool to ensure that the school district’s funding is spread equitably across all taxpayers throughout the city, and are not intended to target particular neighborhoods or classes of property. Commercial taxpayers are not so sure.

Currently pending at the Pennsylvania Supreme Court is the case of Valley Forge Towers Apartments N, LP vs. Upper Merion Area School District and Keystone Realty Advisors, LLC. At issue before the court is whether the Upper Merion Area School District and Keystone Realty Advisors violated the uniformity clause of the Pennsylvania Constitution by selectively filing reverse appeals on commercial properties, while ignoring significantly under-assessed single-family properties.

The court has to decide whether a school district’s statutory right to file an appeal, and an economic reason for doing so, insulate the district from review when it decides to appeal an assessment.

The long-term results

The Supreme Court’s decision will likely have far-reaching effects. Should the court decide that the school district and Keystone’s method for selecting reverse appeals does indeed violate the uniformity clause, that finding will likely preclude taxing districts throughout the state, including Philadelphia, from selectively filing reverse appeals.

On the other hand, if the court rules in favor of the school district, it will legitimize the current reverse appeal process that is slowly permeating the state. The latter result may even inspire additional taxing districts to explore reverse appeals as a source of revenue generation.

The court has already received over a dozen friend-of-the-court briefs from various groups with an interest in the outcome, seeking to weigh in on the issue. Oral arguments were heard on March 8, 2017, though it will be months before the court issues a decision.

Whatever the outcome, taxpayers will want to pay close attention to the Supreme Court’s decision, especially those considering purchasing property in Philadelphia or any other school district that actively pursues reverse appeals. Under the current system, one of the easiest ways for the districts to pick up on potential appeals is to compare the sale price against the property’s current assessment. Unfortunately, this often means unexpected litigation expenses for new property owners and the potential for higher-than-anticipated tax bills.

OKLAHOMA - PROPERTY TAX RELIEF A POSSIBLE SOLUTION FOR HUMAN-MADE EARTHQUAKES

Last September, Oklahoma residents experienced a 5.8 magnitude earthquake that may have been linked to oil and gas companies’ injection of fracking wastewater into underground wells. Colorado, Arkansas, Kansas and Texas have also experienced fluid injection earthquakes with magnitudes up to 5.0 on the Richter scale. Certainly, with quakes of this magnitude, one could expect property damage to occur. And despite efforts to mitigate circumstances leading to human-induced quakes, these kinds of tremors appear to be on the rise. In some states, there are provisions in place offering relief to taxpayers whose property has been damaged or destroyed by earthquakes, which may prove useful going forward.

In California, a state familiar with earthquakes, owners of property damaged by “a major calamity” including earthquakes, may qualify for property tax relief. Under these circumstances, the property is reassessed “to reflect its damaged condition” until it is restored to a similar condition, in which case the property’s new assessed value will be the same as it was before the damage occurred. To qualify, the property must be located in a county that has adopted an ordinance.

International Property Tax Institute

IPTI Xtracts- The items included in IPTI Xtracts have been extracted from published information. IPTI accepts no responsibility for the accuracy of the information or any opinions expressed in the articles.
allowing for such relief, and the damage must meet or exceed a $10,000 loss threshold. Currently, Fresno is the only county that has not adopted such an ordinance.

Oregon also provides similar property tax relief, but the nature of the relief is limited to “[f]ire or [acts] of God.” Residents in states with statutes worded in this manner may find that they are disqualified from seeking property tax relief if the damage-causing event is a human-induced earthquake and not another type of natural disaster.

Oklahoma’s legislature has yet to introduce a plan that addresses property tax relief for damage caused by human-induced earthquakes. The state does provide an income tax credit for owners of residential property whose primary residence was damaged or destroyed by a major natural disaster that occurred on or after Dec. 31, 2011, and also provides a homestead exemption for homeowners whose properties sustained damage due to tornados.

In the meantime, some Oklahoma residents are looking to the courts for recourse concerning damage to their property caused by the recent tremors. Specifically, a class action lawsuit has been filed in the District Court of Payne County, by residents of Cushing, Okla., seeking recovery for physical damage to real and personal property and loss of the property’s market value caused by man-made quakes.

The U.S. Geology Survey reported that Oklahoma’s Sept. 3, 2016, earthquake was comparable to “[t]he largest earthquake induced by fluid injection that has been documented in scientific literature,” which occurred on Nov. 6, 2011, with a 5.7 magnitude and also reported that it is not the first of its kind.

Considering that man-made quakes are expected to continue to occur, perhaps Oklahoma’s legislature will consider exploring property tax relief options that reduce assessed value, such as those in California.

NEW YORK - Reval Revolt!

The Town Hall meeting room overflowed with angry property owners last week who came to protest what they considered an untenable hike in their taxes in the wake of a townwide revaluation.

“Basically, you handed me an eviction letter,” said Elisa Grotto, who lives on Mahopac Point.

Many who came to the March 8 meeting said that part of the problem is the town undervalued utility properties, singling out those owned by New York City.

“The sewer plant on Route 6, owned by New York City, was paying about $500,000 [in taxes]. Then they upgraded it by about $12 to $14 million,” said Mike Barile, a Mahopac businessman and developer who announced last month his intention to run for a seat on the Town Board. “[After the revaluation], the taxes were reduced by about 50 percent to the tune of $248,000. It is obvious that this board has made a decision it’s not going to fight New York City because [they think] they’re going to lose. They are not going to fight for our fair share of the tax money from New York City.”

Barile said his analysis of the revaluation shows that 88.3 percent of the category labeled “Other” is made up of the properties belonging to the City of New York and he contends the city’s property valuation is now down 27.3 percent.

Joe Schultz, an 18-year resident of the town who recently purchased lakefront property, said he believes the town backed away from confronting the city because it’s easier to pass the tax burden on to homeowners.

“I feel the town has avoided going after the city because of the complications of going down the legal path for that,” Schultz said. “So, you go after the homeowner because it’s easier to divide and conquer us. If I am going to go bankrupt anyway, I might as well spend...money on lawyers fighting you.”

Councilman John Lupinacci said Carmel would likely lose a court battle with the city.

“If they would win in court, then what happens?” he asked. “To change the reval on the utilities would not be the answer. The answer is we have to challenge the way [taxes are] done. Go up to Albany and change the process. We need to fight and look for change.”
The property categories hardest hit by dramatic increases in property values appears to be lakefront homes and condominiums. If that stands, Barile contended, it would have dire consequences for the town.

“Do you realize those are the town’s two biggest draws—the affordability of the condos and the beauty of the lakes—and you’ve killed them?” he said. “You’ve ended the two biggest draws we have here in Mahopac.”

Marie Frenkel, who lives on the peninsula on Lake Mahopac, said valuations in her neighborhood went up more than 100 percent.

“Some [equalized values] are even up over 200 percent,” she said. “I am not sure where they got their numbers from because houses [on the lake] are not selling. Some have been on the market for over a year and are not selling. I am curious where they got their values. Maybe they thought this was Carmel, Calif., and not Carmel, N.Y.”

Frenkel said she wants to see how Vision Government Solutions (VGS), the vendor hired by the town for the project, calculated the revaluations. But she hasn’t gotten much cooperation from the town or the company.

“We want a database,” she said. “It would be interesting to see where the numbers went up and where the numbers went down. But to make it so hard for us to get it isn’t right.”

Schultz, who said he bought his lake house just eight weeks ago and saw his taxes double after the revaluation, also wants to see how the figures were calculated.

“I would like to be able to reassess the numbers but now I have eight weeks to do it [before the tax rolls are official],” he said. “Provide us a clear analysis of how you came up with the figures. Let the community come together and decide if the calculations were done correctly. It seems you specifically targeted the lake. I don’t believe your numbers.”

Lupinacci agreed that a more transparent process is necessary and said he would work to make that happen.

“I created an Excel database and I will see if we have the capacity to put it on our website,” he said. “I will talk to the assessor and the board. It is public knowledge.”

Homeowners have several recourses in the coming weeks to try to change their new assessments, including meeting with VGS; meeting with the town assessor; filing a grievance with Board of Assessment Review; and filing a claim with the Small Claims Assessment Review (SCAR).

Councilman Jonathan Schneider said that if a homeowner believes their property was inaccurately assessed, a meeting with VGS is the time to correct it.

“Bring in comparable [properties recently sold in the neighborhood],” he said. “If you have a steep slope, absolutely [talk about it]—whatever is special to your property that would decrease what the value is worth.”

Edye McCarthy, the town’s reassessment monitor, said the more information homeowners bring to these meetings, the better.

“If you don’t think you can sell your property for that 2017 [valuation], then bring it to the attention of Vision Government Solutions first, then the assessor,” she said. “If Vision has a condition on your property that you don’t [agree with], then bring that to their attention.”

Margharita Chirurgi, another Mahopac Point resident, said she agrees that lake properties seemed to be hit the hardest, but she also worries about the businesses located nearby.

“What will happen to all the restaurants and all the dry cleaners...any business?” she said. “They will all go out of business. You will have a town that is dead. It’s a town that was finally coming to life and you’ve taken it upon yourself to destroy that. We are heartbroken.”

Some audience members asked the Town Board to impose a moratorium on adopting the reval numbers until a more thorough vetting of the calculations is done.

“What goes on the rolls is up to the assessor,” said town attorney Greg Folchetti. “The board could recommend doing something else, but the final determination is with the assessor. It is enjoined upon him by law to enter the values on the rolls in the manner he sees fits.”

Assessor Glenn Droese said he felt the numbers provided by VGS were solid and he had no problem with them.

International Property Tax Institute

IPTI Xtracts- The items included in IPTI Xtracts have been extracted from published information. IPTI accepts no responsibility for the accuracy of the information or any opinions expressed in the articles.
“The statistics that we are seeing in regard to sales and assessment ratios are good,” he said. “The majority of the town is correctly assessed at fair market value. Everything looks good so far.”

However, some Town Board members expressed concern over what they heard at the meeting.

“I am not happy,” said Councilwoman Suzy McDonough. “When we started the reval, the intention was to make it fair. When we got the numbers I was a little more than shocked. We will work this out. I don’t know how, but somehow we will.”

Supervisor Ken Schmitt promised to sit down with the Town Board and its consultants to take a second look at the numbers and examine the way they were calculated.

“I clearly have heard you tonight. I understand where you are coming from,” Schmitt told the crowd. “I am not comfortable with the results that I am seeing. We are going to look at every option before we implement this. We need to go back to the table and rethink it. Everyone who spoke here tonight, I agree with you. There are inconsistencies.”

ILLINOIS - Legal bills exceed $1M in GCMS’s property tax dispute with One Earth Energy

The Gibson City-Melvin-Sibley school district has now spent more than $1 million in legal and other fees in its unresolved dispute over the assessed value of a Gibson City ethanol plant, but the district’s superintendent said those bills may not be growing much more.

To date, the GCMS school district has expended $1,023,954 over the past nine years in trying to keep the One Earth Energy ethanol plant’s assessed value unchanged, according to information obtained by the Ford County Record via the Illinois Freedom of Information Act.

The bills covered everything from legal fees paid to Aurora-based Whitt Law to appraisal fees to hiring expert witnesses.

However, since the 2015 calendar year, when the district spent $423,985, it has only incurred about $100,000 more in expenses related to the dispute.

A lack of activity in the property tax appeal in recent months has kept the bills at bay, Superintendent Jeremy Darnell said Tuesday. District officials, along with One Earth Energy officials, have been waiting, literally, for the past two years for a resolution to the case, and their respective attorneys have, too.

“Both attorneys have said it could be months,” Darnell said, before an administrative law judge appointed by the Illinois Property Tax Appeal Board rules on the appeal.

“So we are literally waiting for the judge,” Darnell said. “With the number of cases they have in the queue down there (in Springfield), I don’t know if we get prioritized or if they take the cases as they come in, but (in any case) we are completely at the Property Tax Appeal Board’s disposal. Until we get something, we just have to sit back and wait.”

Since January 2015, administrative law judge Carol Kirbach has been considering evidence and testimony regarding One Earth Energy’s appeal of its 2014 assessed value, which, if granted, would be retroactive to 2009 and also be reflected on the plant’s assessed value in years subsequent to 2014.

While both sides continue to await a resolution to the dispute, the good news is that GCMS and One Earth Energy are not spending the kind of money on the matter that they had been.

“The attorneys have stated that until the judge renders a decision, there is going to be very limited activity — so very limited costs for us,” Darnell said.

Darnell noted that in fiscal year 2017, which runs from July 1, 2016, through June 30, 2017, the district has incurred only about $5,000 in expenses related to the appeal.

“That’s because we are simply waiting for the judge in the case to render a ruling, so there’s no activity going on,” Darnell said. “It’s just a matter of waiting for that process to take place.”

The case went before the PTAB for the first time after the Ford County Board of Review rejected One Earth Energy’s request to have the plant’s 2014 taxable value lowered from $22 million to $6.8 million — marking the sixth time that board had denied the plant’s appeal since it was built in 2009.

Last month, the board of review denied a reduction in the plant’s assessed value for an eighth straight year, after the plant filed an appeal of its 2016 assessed value of $23,202,180, seeking to have it lowered to $6,106,800. One Earth Energy disagrees with the assessment office factoring “process machinery and equipment” into the assessed value of the plant’s property. A less important issue, One Earth Energy says, is what that equipment should be valued at.

Attorneys for both sides — Indianapolis attorney Tom Atherton, representing One Earth Energy, and Stuart L. Whitt of Aurora-based Whitt Law, which is representing GCMS — both said they did not expect any decision by the administrative law judge for quite some time.

Both Atherton and Whitt participated in the board of review hearing via telephone, rather than in person as they had done in the past. Atherton told the board of review that allowing them to do so “keeps the costs down,” adding that “we all know this has been a very expensive process for all concerned.”

Former GCMS Superintendent Anthony Galindo has said that reducing the plant’s assessed value to $14 million — the highest amount One Earth Energy has said it would accept — would mean a loss of about $500,000 a year in property tax revenue.

Under an agreement with the city of Gibson City, $650,000 of the plant’s $2 million in annual property taxes goes to GCMS. And of that $650,000, the $500,000 that represents the amount GCMS stands to lose is being placed each year in a reserve fund and not being spent until the tax appeal situation is resolved, Galindo said.

Galindo said he assumes that if One Earth Energy’s appeal is granted, the district would likely need to pay back all of that money to the company. And the district would lose out on property tax revenue in subsequent years, as well. That is why the district has felt the matter important enough to spend large quantities of cash in contesting the appeal.

By the numbers
Here is how much money the Gibson City-Melvin-Sibley school district has spent each calendar year in legal and other fees in its unresolved dispute over the assessed value of the One Earth Energy ethanol plant in Gibson City:

- In 2008: $24,448
- In 2009: $22,738
- In 2010: $13,122
- In 2011: $101,575
- In 2012: $174,970
- In 2013: $142,988
- In 2014: $19,720
- In 2015: $423,985
- In 2016: $99,941
- In 2017 (to date): $467

Illinois has highest overall tax burden in the nation

A new report from WalletHub finds Illinois’ combined state and local tax burden is higher than that of every other state and the District of Columbia.

A March 14 report has found that Illinois has the costliest state and local tax burden in the country. Statewide, the median Illinois household pays $8,162 in annual state and local taxes, including sales taxes, property taxes and income taxes.

International Property Tax Institute

IPTI Xtracts: The items included in IPTI Xtracts have been extracted from published information. IPTI accepts no responsibility for the accuracy of the information or any opinions expressed in the articles.
WalletHub, a personal finance website, released its annual ranking of states’ tax burdens. The report combines statewide taxes with local taxes to create an overall effective state and local tax rate for the median household in each state.

Illinois was ranked the worst in the nation, with state and local governments effectively taxing median households at 14.76 percent. WalletHub used several taxes to calculate Illinois’ percentage; however, the most damning was the property tax. Illinois ranked second-worst in the nation for property taxes. People in homes with the U.S. median home value pay $4,105 annually in Illinois, according to WalletHub. Illinois’ crushing property taxes combined with income and sales taxes make the Prairie State the most taxed in the country.

And high taxes are driving Illinoisans to the border. From 2006 to 2015, a net 700,000 people migrated out of Illinois. Polling by the Paul Simon Public Policy Institute showed 47 percent of Illinoisans want to leave the state, and the single biggest reason is Illinois’ high tax burden.

Some state politicians want to make this tax burden even worse.

The Illinois Senate is currently negotiating its so-called “grand bargain” budget deal, which includes billions of dollars in tax hikes for Illinoisans. Among the Senate’s ideas: a permanent 33 percent income tax hike, implementing a tax on sugary beverages, raising taxes on food and drugs, and expanding the sales tax to include previously exempt services.

And in exchange for raising and implementing a slew of taxes, the Senate is offering a mere two-year property tax freeze with exceptions for costs related to debt service, pension payments and public safety—some of the biggest cost drivers of property taxes. The short-lived freeze does nothing to curb local cost drivers, such as collective bargaining and expensive state mandates, and would not be enough to give relief to overburdened Illinois homeowners.

The “grand bargain” also calls for more than $200 million annually to go to the Chicago Public Schools teachers’ pension fund, despite the fact that Chicago students receive more state funding than the average Illinois student.

These proposals are out of touch with what Illinoisans want. Polling commissioned by the Illinois Policy Institute reveals a majority of Illinoisans want a budget without tax hikes. Another poll conducted by Anzalone Liszt Grove Research shows 66 percent of Illinoisans are opposed to income tax hikes.

Senators considering the “grand bargain” should realize their constituents already have the highest tax burden in the nation and shouldn’t have to cough up more. Illinois lawmakers should embrace real reform by going after the cost drivers that are bankrupting the state and implementing a five-year property tax freeze to give Illinois families some much-needed relief. Without real reform, Illinois households will continue to pay more for the same services.

Ohio Supreme Court rules on $14M Coca-Cola plant appraisal

The Ohio Supreme Court has upheld a county appraisal of Madisonville’s Coca-Cola plant that was $7.2 million more than what the company initially sought.

In a decision issued this week, the court unanimously affirmed a ruling by the Ohio Board of Tax Appeals, which rejected a challenge from Johnston Coca-Cola Bottling Company Inc. to reduce its property tax value.

It retained Hamilton County Auditor Dusty Rhodes’ most recent valuation of the property, which was $14 million.

The 34-acre property on Duck Creek Road houses a 426,000-square-foot bottling and distribution facility, according to the opinion. The auditor’s office had valued it at $13.5 million for the 2011 tax year, which led to Coca-Cola’s challenge.

The company presented an appraisal of $6.8 million, and after that was denied, it appealed to the tax board. A second appraiser hired by the company said the property was worth $8.55 million, documents show.

International Property Tax Institute

IPTI Xtracts- The items included in IPTI Xtracts have been extracted from published information. IPTI accepts no responsibility for the accuracy of the information or any opinions expressed in the articles.
In response, the county auditor’s in-house appraiser valued it at $14 million. As part of his determination, according to the high court’s opinion, the appraiser analyzed six sales in the Cincinnati and Dayton areas of industrial buildings that were larger than 300,000 square feet.

The Board of Tax Appeals, in September 2014, upheld that appraiser’s valuation. Coca-Cola’s appeal to the Supreme Court was filed a month later.

**WISCONSIN - Communities push back against big box stores’ tax challenges**

Tired of losing tax revenue after legal battles with chain retailers, area communities are urging the state Legislature to pass a bill to address what they call a “dark store” loophole.

Target, Menards, Walgreens and other retailers have frequently challenged their tax assessments in Racine County municipalities, claiming their stores’ value should be measured against recent sales of comparable large stores.

But local officials say those stores often sell for pennies on the dollar, as they are often downtrodden, vacant properties. Still, companies are generally successful, sometimes cutting their tax bills by up to 50 percent.

Village boards in Mount Pleasant and Sturtevant have passed resolutions in recent days in support of legislation that would close off that tax strategy. The bill is still being drafted and is expected to be introduced later in the legislative session.

Mount Pleasant Assessor Dan McHugh said the practice shifts the tax burden away from corporations and onto homeowners and small businesses.

“This is affecting taxpayers all across the county, because even if you’re in some place that doesn’t have one of these stores, now you’re picking up a bigger portion of the county tax,” McHugh said.

Big box stores have argued their businesses and buildings are branded to such a degree that there is no market to speak of, so the only comparable properties are unused big box stores currently on the market. They rely on a state Supreme Court ruling that found sales of comparable property is the best evidence of value, McHugh said.

“When these stores sell is typically at the end of their useful life when they’re abandoned,” said McHugh, arguing those buildings are often converted to other uses and are not comparable to a viable big box store still in business.

A spokeswoman for Target, which has challenged City of Racine assessments several times, said the company wants to ensure its properties are fairly assessed and follows established valuation standards.

“There are three methodologies to determine value in the appraisal of real estate — sales comparison, income and cost. We analyze available market data to determine whether Target’s properties are being assessed fairly and equitably,” spokeswoman Kristy Welker said in an email.

Target filed five property tax challenges between 2010 and 2015 against the City of Racine, resulting in a settlement refunding the company $386,000 in property taxes.

In Mount Pleasant, settlements with Walgreens have cost the village $20,000 for each of its two stores in the village, McHugh said. A 2015 settlement with Menards resulted in a $50,847 refund in property taxes and a $1.3 million drop in the assessment of the store at 3101 S. Oakes Road.

“This is extremely important because every dollar the commercial people don’t have to pay, it only gets pushed onto the residents, which is wrong,” Mount Pleasant Trustee John Hewitt said at the board’s Feb. 27 meeting.

**TEXAS - Do The Costs Of Property Tax Reform Outweigh The Benefits?**

International Property Tax Institute

IPTI Xtracts- The items included in IPTI Xtracts have been extracted from published information. IPTI accepts no responsibility for the accuracy of the information or any opinions expressed in the articles.
Supporters of Senate Bill 2 say the measure is needed to keep people from losing their homes. Opponents say it would starve local government of funding needed to provide critical services – and charge the bill’s author with using misleading statistics to make his case.

Last May, the Senate Select Committee on Property Tax Reform held a hearing at the University of Houston. It took testimony from dozens of witnesses, but the basic message committee members drew boiled down to eight words: “Now we’re being taxed out of our home.”

Cheryl Stalinsky is a retired lobbyist for the Texas Municipal League. The 72-year-old said she regularly spoke with neighbors in Fort Bend County – neighbors who came to her, crying, after meeting with the county’s appraisal district to discuss their property taxes.

“By the time I pay taxes and insurance,” Stalinsky said, “we’re lucky to go to McDonald’s, if you know what I mean.”

Senator Paul Bettencourt of West Harris County chaired the select committee. “The bottom line, I believe, is that there’s a growing sentiment that folks are really being pressed too hard as property taxpayers, and we have to slow down their rate of increase,” he says.

After nearly a year of hearings, Bettencourt and three of his colleagues produced Senate Bill 2. The bill would require local governments to get voter approval to raise property taxes more than 4 percent. The current cap is 8 percent.

“In Harris County, the growth over the last three years has been an astonishing 36 percent,” the senator says. “That’s the average home’s taxable value. It means their tax bill’s up over $900 to everybody.”

Those numbers come from a study by the Texas Taxpayers and Research Association. Critics of SB 2 argue they greatly overstate the growth of property tax bills.

“But that doesn’t follow,” Vollrath says, “because not everybody in Texas sold their home. And the median value of a home that’s been sold over the last five years may have gone up, but that doesn’t mean the median value of all homes has gone up.”

Vollrath argues a better measure to use is the American Community Survey, produced by the U.S. Census Bureau. According to the survey, median home value in Texas rose about 13 to 14 percent over past five years, on par with household income growth.

But Bettencourt says it’s the federal numbers that are faulty, “because the amount of taxes owed that they claim the average home was about $2,500. And believe me, the average homeowner would love to be paying only $2,500, because the real number’s about $4,500 now.”

Bettencourt says the only solution that’s fair to taxpayers is for local governments to rein in their spending. It’s an argument that goes down poorly with his fellow Republican, Harris County Judge Ed Emmett. The judge is no fan of property taxes either, but he notes they are the only revenue the county is allowed under state law. He too questions Bettencourt’s numbers. But that’s not his biggest problem.

“The four major things that county government provides are criminal justice, indigent health care, flood control, and transportation,” Emmett says.

The judge says the county has no control over the number of “customers” using the criminal justice system. It gets no help from the state in providing for indigent health care. Cutting back on flood control, given recent trends, would be a bad idea. And road construction is critical to attracting new taxpayers, such as the Exxon Mobil campus near Spring.

“So if we have to cut back on transportation, then that just brings the economic growth of our region to a screeching halt,” Emmett says. “That would be the result of Senate Bill 2.”

The Senate Finance Committee is scheduled to hear SB 2 next Tuesday, March 14.
Officials See Tax-Increment Financing As Tool For Economic Development

Efforts to bring economic development and new retail to Greene County have in the last year turned a major focus on tax-increment financing.

Officials eyeing four potential project areas across the county hope to utilize this economic development tool to incentivize new retail. Those areas are: downtown Greeneville, exit 23 in Mosheim, beside the movie theatre along U.S. 11E and at Morgan Road, across from Wal-Mart.

Tax-increment financing delays for a set period any increase to the property tax that is due to increased value from the project. That funding instead assists developers in aspects the state deems as having public interest.

MOVIE THEATRE

Greeneville City Administrator Todd Smith indicated in early February that work is underway on a TIF proposal along the West Andrew Johnson Highway, beside the Towne Crossing 8 theatre. He said he would soon call a meeting of the Industrial Development Board of Greeneville and Greene County to consider the proposal.

Although few details have yet been released about this project, it looks to bring at least a new restaurant near the movie theater.

Greeneville officials say they see opportunity along that stretch of the West Andrew Johnson Highway.

“We’re interested in doing that because that’s a part of town that could use an influx of investment,” Smith said. “I think we could see other development fall in place there.”

EXIT 23

Mosheim Mayor Tommy Gregg noted that the town is also looking to add a TIF near Interstate 81 exit 23.

“Hopefully we can present that somewhere in the near future,” Gregg told the IDB in February.

In late January, the Mosheim Board of Mayor and Aldermen gave approval to a resolution to establish a tax increment financing project at Exit 23, off I-81.

Town officials say the project is expected to help promote additional growth and new business for the municipality.

During a January work session, Mosheim board members heard from Morristown-based land developer Randy Corlew, of Welfoc Enterprises LLC, regarding possible development plans at the interchange through the use of TIF financing.

Corlew told the board that he has heard interest in the property from a hotel, two grocery store chains and a couple of restaurants. He said he would like to fund the project through the use of tax increment financing, which must first be approved by the IDB and the Greene County Commission.

Corlew estimates that it would take about $3.8 million to develop infrastructure on the 29-acre property in question, which lies on the east side of the interstate, adjacent to a Mobile Oil convenience center and Wendy’s restaurant. Of the $3.8 million, almost $1 million would be needed to build a road on the property.

DOWNTOWN

Plans for the largest of the planned TIF projects, in downtown Greeneville, continue to solidify. In January, town officials put the finishing touches on a map outlining the boundaries of the district that aims to attract new private and public investment.

It will stretch north to south from Spencer to McKee streets and East to West from just beyond College Street to Railroad and Loretta streets, covering all the primary downtown areas in an attempt to lure new developments and reconstruction projects.
“We’re working to figure out what the public projects are that we need to include in the plan that will be an incentive or attraction to business investment downtown,” Smith said. “We started talking about a parking solution of some sort, which may be a structure or a parking lot. I think that will be part of it.”

Ultimately, he said, projects funded through TIF revenues will aim to prove that downtown is worthy of more private investment.

“I think we’re going to see improved streetscapes, sidewalks and possibly improved water and sewer infrastructure — the kinds of investment that we as a public body can make to demonstrate to the business community that we’re investing in our downtown and we think it’s a good investment of your private dollars,” Smith said.

A TIF district could be the vehicle that encourages developers to take a chance on undeveloped properties or those that have fallen into a state of disrepair.

State law gives housing authority boards and industrial development boards the authority to establish TIF districts. The Greeneville Housing Authority board is expected to act on a TIF plan for downtown Greeneville.

The plans also have to be approved by the Greeneville Board of Mayor and Aldermen and Greene County Commission. Votes have not yet been taken on the downtown initiative.

“One project spurs others, and there is a sense of growth,” Smith said. “The evidence is in our building permits and in our subdivision applications. In the last couple of years, those have been way over budget in terms of our projected revenues, which means a lot of people are applying for building permits.”

That demonstrates an overall uptick in economic growth.

“That’s the evidence that we have that the local building economy — which means that the local economy, to an extent — is on the upswing,” Smith said.

“How do we make quality public and private investments? The board recognizes that it’s going to take partnerships. When you can turn these (TIF) incentives into actual private dollars in the community, it makes your market competitive with other, larger markets,” Smith said.

MORGAN ROAD

The final other TIF district in the works in Greeneville city limits is on Morgan Road, near Wal-Mart SuperCenter. This project aims to attract national retailers and was approved by the county and city governments in January.

The approved TIF allows the IDB to borrow up to $2.25 million to help fund aspects of the project.

According to estimates presented by town and county officials, the nine-parcel property currently brings in $20,000 in property taxes.

Once the planned $16 million development is in place, the property would bring in an estimated $250,000 in property tax. That increase would pay the loan.

The largest retailer for the project would be a nationally known soft-goods retailer that offers apparel. It has a current location in Hamblen and Sevier counties. Of the four retailers already eyeing the project, only one already has a presence in Greene County.

PENNSYLVANIA - Portage considers enacting tax on vacant churches to prevent blight

Facing a growing number of vacant, neglected structures, Portage Borough Council has taken an unusual approach for encouraging reuse of several former church properties.
Council voted last week to explore revoking tax-exempt status for the former Our Lady of the Sacred Heart Parish church buildings and a former church school.

Council President Sharon McCarthy said she came up with the idea after hearing community frustration about the vacant buildings.

“We are not after this for getting the tax money,” McCarthy said. “The purpose is: If they continue to deteriorate, who does it come back on?

“The elected officials and the taxpayers’ money.”

McCarthy brought the suggestion to council in February and asked borough Solicitor Michael Emerick to look into property-tax exemption for churches. At this month’s meeting, Emerick read part of the law, saying it applies to “actual places of worship.”

Since the churches are no longer used by the parish, they may not qualify for real estate tax exemption, he said.

Our Lady of the Sacred Heart was merged with the former St. Joseph Church in 2015, combining three former active congregations into one, renamed the Holy Family Parish.

Mass is now held in the former St. Joseph building on Caldwell Avenue.

Both Sacred Heart parish church buildings remain vacant and are listed for sale, along with the former school.

They include the former Assumption of the Blessed Virgin Mary Church on Hammers Street and the former Sacred Heart of Jesus Church on Mountain Avenue at Orchard Street. The two were merged in 1999 to create the Our Lady of the Sacred Heart Parish.

‘A lot of interest’

The original Sacred Heart church properties on Mountain Avenue include an attached rectory, a former school and two-car garage.

Deeds show the property is owned by the Roman Catholic Diocese of Altoona-Johnstown, in trust for the local congregations. Holy Family continues to pay for utilities and maintenance on the vacant buildings, McCarthy said.

Council’s action to tax the properties may be intended to push the diocese to sell the buildings.

Johnstown Century 21 All Services Inc. real estate agent Scott Morris said he has a sales agreement for the Mountain Avenue properties, but is waiting for the diocese. Morris also is trying to sell the Assumption building.

“We’ve had a lot of interest from a lot of different people,” Morris said. “We are just waiting for the diocese. They have some things they need to work out.”

If the sale goes through, Sacred Heart will become the new home for Johnstown’s Holy Cross Parish of the Polish National Catholic Church, 534 Woodland Ave., the Rev. Paul Zomerfeld said.

“Our building here in Moxham is almost 100 years old,” Zomerfeld said. “It needs a lot of repairs. With all the shootings, I don’t want to live here no more because it has become too dangerous.”

‘A canonical process’

None of the 10 active members lives in Johnstown, but some live in the Portage and Lilly areas, he said, adding that the members see the move as an opportunity to grow.

Zomerfeld said the church has put a deposit on the Sacred Heart Property and the sale was accepted by the Holy Family congregation. He has contacted the diocese numerous times about the delay, but received no answers.
Although he said he does not know why the sale has not been finalized, he said the relationship with Altoona has a history of tension. When Johnstown catholic churches were being closed, Zomerfeld said parishioners were discouraged from moving to the Polish National Catholic Church.

Diocese spokesman Tony DeGol said the delay is necessary.

“The diocese is by no means holding up the sale of the properties,” DeGol said in an email. “But there are many factors involved in matters such as this, including a canonical process that all dioceses must follow before selling property.

“Both the Diocesan College of Consulters and Finance Council must approve potential sales, and those steps are currently being undertaken with regard to the Holy Family properties.”

OREGON - Legislature loses credibility on property taxes

Reform effort would require exercise in good faith

The Oregon Legislature is making one of its periodic runs at the state’s property tax system, whose many problems almost outweigh its value to homeowners. The reform effort originated in the Senate Committee on Finance and Revenue, chaired by Mark Hass, D-Beaverton. Hass is a smart and well-intended lawmaker with a longtime interest in tax reform. Problem is, what’s happening elsewhere in Salem makes the work of Hass’ panel almost impossible to take seriously.

Changing the state’s property tax system is a long and complex policy slog that requires an unusual level of buy-in from the public. So far, Hass’ committee has held a pair of hearings on a bill, Senate Joint Resolution 3, that would change fundamentally the way property taxes are calculated.

The rate at which taxes may grow every year is limited as the result of a ballot measure that arose from the state’s 1990s-era property tax rebellion. Prior to Measure 50, which voters approved in 1997, taxes were calculated according to a property’s actual, or real market, value. Measure 50 created a new, lower value – assessed value – for taxation purposes. Unlike a property’s real market value, which can fluctuate markedly, assessed value may escalate by only 3 percent annually. That means property taxes tend to grow in a predictable, steady fashion.

However, what’s good for homeowners isn’t necessarily good for local governments, whose costs often grow more quickly than the revenue generated by limited property taxes. They’d love to revamp the system, and perhaps collect some more money.

To that end, they’re focusing relentlessly on a property tax distortion created by Measure 50. Because taxes aren’t calculated using a property’s actual value, and because actual values have grown at varying rates, the owners of homes that would fetch similar prices on the open market often have very different tax bills. Reform advocates are operating on the assumption that homeowners’ desire for equity will overcome their attachment to the system’s protection from large or unexpected tax hikes.

The opinion of homeowners and other members of the public matters so much because they, and not lawmakers, are in the policy driver’s seat. To reset Oregon’s property tax system would require a constitutional amendment, which would require approval by voters. Among other things, SJR 3 would ask Oregonians to base taxation on real market value rather than assessed value. The change would give the Legislature the authority to mitigate and smooth out tax hikes.

Strip out the mind-numbing details, and SJR 3 amounts to a plea for trust. Voters, it says, should trust lawmakers to use expanded taxing authority responsibly. Without such trust – a lot of it – voters are about as likely to toss out Measure 50 and its tax-hike limits as Gov. Kate Brown is to endorse Ivanka Trump’s clothing line.

How frustrating it must be, then, for property tax reformers to watch their colleagues consider proposals like House Bill 2771, which received a public hearing Tuesday in the House Committee on Revenue. For anyone making the case that lawmakers should never, ever be trusted when it comes to property taxes, HB 2771 is Exhibit A.

The bill would phase out the itemized deduction of property taxes on a sliding scale based on income. Single filers would begin to lose their deduction when their adjusted gross income exceeds $50,000. At $125,000, it would disappear entirely. Homeowners would be paying taxes on the money they set aside to pay taxes.

International Property Tax Institute

IPTI Xtracts- The items included in IPTI Xtracts have been extracted from published information. IPTI accepts no responsibility for the accuracy of the information or any opinions expressed in the articles.
What’s the justification for this? Money, of course. The Legislative Revenue Office estimates the change would bring in about $190 million during the 2019-21 biennium. A voter weighing whether to relinquish the protection provided by Measure 50 might reasonably wonder why he should do so given the willingness of some lawmakers to make his annual property tax bill sting even more through double-taxation.

And that’s without considering two other features of HB 2771. First, it’s one of many bills sponsored technically by a committee, effectively hiding the identity of legislators responsible for it. Second, it does not include a supermajority provision required for tax bills – even though it is functionally a tax hike. It is, thus, a sneaky exercise in bad faith.

Oregonians will know that lawmakers are really serious about tax reform when they rediscover a strategy favored by former Gov. John Kitzhaber. First, show taxpayers that the state can behave responsibly and control costs. Then, having gained some credibility, ask them to reconsider their taxes.

The strategy didn’t work out well for Kitzhaber, who never quite got around to the tax-reform part during his fourth term. But it’s a far better path to success than the self-defeating lack of discipline that presents Oregonians with both SJR 3 and HB 2771.

**MICHIGAN - Pending Appeal in Michigan Supreme Court May Warrant Filing a Protective Property Tax Appeal This Year**

On February 1, 2017, the Michigan Supreme Court ruled that it would hear oral arguments on the application for leave to appeal in Menard. One of the issues to be considered is “whether the Michigan Tax Tribunal may utilize a valuation approach similar to that recognized in Clark Equipment Company v Leoni Twp, 113 Mich App 778 (1982)” The referenced Clark approach is a “value in use” approach. This is important to any owner of property which has special features which while valuable to the owner, would have little or no value, or possibly even negative value, if the property were to be sold in the marketplace. Many commercial and industrial properties have such features. Owners of such properties may wish to file property tax appeals.

Property is supposed to be assessed at 50% of “true cash value” which has been held to be “synonymous with fair market value.” Since the Supreme Court’s 1982 decision in First Federal Savings and Loan, it was widely considered settled law that the market value standard is to be based on “value in exchange” and not “value in use”. To illustrate the reasoning of the two valuation premises, if a factory, retail store or other building contains features which are used by and useful to the owner, but which would not bring additional value in the marketplace, the value in use premise would ascribe value to those features and the value in exchange approach would not. The value in use approach would result in higher assessed values for any property containing special features which are desired by their owners, but which would not be desired in the marketplace.

While the Court of Appeals approved of “value in use” as a proper value premise for specialty properties, such as factories in 1982, it did so relying on its then recent 1981 Court of Appeals decision in First Federal, which, the Supreme Court reversed shortly after the Clark court relied upon it. The Supreme Court’s ultimate rejection of the value in use approach in First Federal was also the basis for the 2000 decision of the appellate court in Meijer v Midland. The recent decision of the Court of Appeals in Menard, however, cited the Court of Appeals’ 1982 Clark decision twelve times and adopted its value in use reasoning, suggesting that the issue is not entirely resolved. If leave is granted and the issue is addressed, the Court will decide whether it is proper for assessors to hypothesize a potential purchaser who desires unusual features of the property as much as the owner does, even when no such buyers really exist – and since any one such hypothetical buyer would pay not much more than the market price set by the other real world market participants, the Court may consider whether one should hypothesize multiple hypothetical buyers, even when they don’t.

The issue affects retail stores, industrial facilities and any other property with features desired by the owner which would add little to value, or perhaps even reduce value, if the property were offered for sale. Owners of such properties may want to consider filing protective appeals before the May 31 deadline for commercial, industrial and developmental valuation appeals.

Menard Inc v Escanaba, __Mich App__ (May 26, 2016, COA No 325718), 1v applied for Supreme Court No 154062


Clark Equip Co v Leoni Township, 113 Mich App 778; 318 NW2d 586 (1982)

**International Property Tax Institute**

IPTI Xtracts - The items included in IPTI Xtracts have been extracted from published information. IPTI accepts no responsibility for the accuracy of the information or any opinions expressed in the articles.
First Federal Savings and Loan v City of Flint, supra, decided by the Court of Appeals in 1981.


**MAINE - Oil pipeline seeks tax abatement in South Portland**

South Portland’s Clear Skies restrictions on oil exports reduced the value of its property by 42%, the company says, so it wants an abatement.

The Portland Pipe Line Corp., one of the largest taxpayers in South Portland, has applied for a property tax abatement, seeking a 42 percent reduction in the $44.7 million assessed value of its real estate and personal property across the city.

The pipeline company has asked for discounts on holdings stretching over 210 acres, from its oil tanker pier at Cushing Point on Casco Bay to a vacant 72-acre wooded parcel off Highland Avenue.

The company blames the city’s Clear Skies ordinance, which it is challenging in federal court, saying that the 2014 ban on crude oil exports has “significantly reduced the value” of the pipeline, according to the abatement application.

A Canadian-owned subsidiary of ExxonMobil and Suncor Energy, the company also “suffers from severe economic obsolescence that has not been taken into account in the assessment,” the application states.

Demand has waned for foreign crude that the pipeline has pumped to refineries in Montreal for 75 years, and the Clear Skies ordinance prevents the company from reversing its flow to bring oil from Canada to tankers in South Portland.

The 236-mile pipeline has largely shut down in the past year or so since the refineries started drawing oil from western Canada and North Dakota. The pipeline and its 23 massive tanks, on the waterfront and off Hill Street, received deliveries from only 11 tankers in 2016, according to the Maine Department of Environmental Protection. That’s down from 24 tankers a month less than a decade ago.

If the abatement were granted as requested, the city would lose $331,247 in property tax revenue, adding to the more than $1 million that taxpayers have spent so far defending the Clear Skies ordinance against the pipeline company’s lawsuit.

**QUESTIONING VALUATION TECHNIQUES**

City Assessor Jim Thomas said he has until the end of March to respond to the company’s application and declined to discuss it further.

Thomas said property assessments haven’t increased since a citywide revaluation in 2006. Then, in response to the real estate slump that came with the subsequent recession, the city reduced all land values by 10 percent in 2009 and an additional 5 percent in 2010. Real estate sales have since rebounded, Thomas said, with market prices surpassing 2006 assessed values.

An analysis of South Portland real estate sales in 2016 by Maine Revenue Services, the state tax agency, showed that the city’s assessments are about 92 percent of market value – in other words, about 8 percent below market value, according to Thomas.

If Thomas agreed to reduce the overall value of pipeline real estate and personal property from $44.7 million to $26 million, the company’s annual tax bill for the fiscal year ending June 30 would fall from $791,447 to $460,200, based on the tax rate of $17.70 per $1,000 of assessed property value.

Such a change would push the pipeline company from the fifth-largest taxpayer in the city, just below Central Maine Power Co., to the seventh-largest, just below Fairchild Semiconductor. The Maine Mall, the city’s largest taxpayer, generates a $4.4 million annual tax bill on $250 million in property, including 73 acres along the Maine Turnpike.

If Thomas refuses to change pipeline property values as requested, the company could appeal his decision to the city’s Board of Assessment Review and proceed to court if the matter isn’t resolved at the municipal level.
In its abatement application, the company claims that its properties are “substantially overvalued” because the assessor “did not use proper valuation techniques.”

Thomas said he is required by law to assess properties according to their just market value. He’s also obligated to ensure the rough equality and uniform apportionment of the overall tax burden across different classes of properties – residential or commercial, single-family Cape or downtown apartment complex, brick storefront or metal industrial warehouse.

When assessing a commercial or industrial property, the income generated by a business can be a factor in determining market value, he said.

REPERCUSSIONS OF ORDINANCE

The pipeline company’s abatement application contained no details about its current operations. When asked via email about the pipeline’s status, a company spokesman declined to provide information about business activity, such as tanker deliveries or staffing levels.

“Portland Pipe Line is looking forward to reaching a mutually agreeable resolution of its property tax matters with the city of South Portland,” wrote Jim Merrill of The Bernstein Shur Group. “The company remains open for business and continuing the safe and excellent operation it has long been known for.”

Merrill declined to comment further because of the ongoing lawsuit over the Clear Skies ordinance.

Approved by the City Council in July 2014, the ordinance banned the loading of crude oil into tankers on the city’s waterfront, effectively blocking the company from reversing the pipeline’s flow to bring oil from Canada to South Portland. The company filed a lawsuit in February 2015 in U.S. District Court in Portland, where it’s being reviewed by Judge John Woodcock Jr.

The company claims the ban is unconstitutional because it interferes with interstate commerce, discriminates against Canadian interests, devalues the pipeline and infringes on areas of regulation best left to the federal government. The city, meanwhile, is acting “to protect the health and welfare of its residents and visitors and traditional land use authority to promote future development consistent with the comprehensive plan,” it said in court papers.

In its abatement application, the company claims that its real estate, currently valued at $42.9 million, is worth $17.9 million less, or $25 million. Its personal property, including business equipment, is worth $749,826 less than its current assessed value of $1.8 million, or about $1 million.

Pipeline properties targeted for value reductions include: 1 Cushing Court, tanker pier with 2 acres, from $4.6 million to $2.6 million; 10-11 Portland St., 7 acres with two oil storage tanks, a small office building and a large industrial dock, from $3.36 million to $1.9 million; 90 Preble St., 20 acres with two storage tanks, from $3.7 million to $2.1 million; 30 Hill St., 102 acres with 19 storage tanks and nine small industrial buildings; $26.8 million to $15.2 million; and 845R Highland Avenue, 72 acres of vacant land, from $2.4 million to $2 million.

The company also wants the assessor to reduce the value of two parcels totaling 5 acres at Cushing Point for which it currently pays no taxes. They are next to the tanker pier and considered part of Bug Light Park. The mostly wooded waterfront parcels are valued at $1.9 million, but the city’s taxpayers cover the $34,676 annual tax bill in exchange for public access to the land.

INDIANA - Court rejects property tax exemption for Portage Steelworkers hall

United Steelworkers Local 6787 is not primarily a charitable or educational entity, and, as a result, its Portage union hall and banquet center are not eligible for a property tax exemption.

In a 12-page ruling, Indiana Tax Court Judge Martha Blood Wentworth rejected the union’s claim that because its members generally are better educated than other citizens due to participation in union activities, and its buildings sometimes are used for free by charitable groups, that it qualifies to pay no property tax.
She determined that the Indiana Board of Tax Review properly concluded the buildings mainly are used by the union for the personal economic benefit of its members, and any public benefit merely is "incidental" and "pursued for self-interest rather than for altruistic or philanthropic motives."

Specifically, Wentworth refused to accept the union's argument that it should be considered as operating similar to a tax-exempt benevolent corporation.

Wentworth noted that claim ignored the fact that unions are organized under a wholly distinct statute and relied on an 1865 Indiana Supreme Court decision that she said was irrelevant to this case.

She also declined the union's invitation to reweigh individual pieces of evidence presented to the Board of Tax Review.

Instead, Wentworth found that the board's factual findings against the union's educational and charitable purposes "are supported by substantial evidence."

The union still can pursue its property tax exemption by appealing the Tax Court ruling to the Indiana Supreme Court.

At issue are the 2008 and 2010 property taxes assessed on the Steelworkers' 12,000-square-foot union hall and 22,000-square-foot banquet/meeting center on 20 acres of land on the west side of Ind. 149, just south of U.S. 20, in Portage.

The property and buildings were determined to be worth $3.5 million in 2008 and $5 million in 2010, according to court records.

**Illinois 2nd Highest State in Property Taxes**

Illinoisans’ property tax rates are higher than all but one other state. Finance website WalletHub’s annual property tax rankings show Illinoisans still pay a higher burden than any other state except New Jersey.

“"The average person in Illinois is spending around $4,000 each year [in property taxes] just to have their house,” said WalletHub analyst Jill Gonzalez, who added low-tax neighbors like Indiana make moving across the border an attractive option. “One and a half percentage points off of your property tax rate certainly is worth it, depending on what type of family is moving across these lines.” The average amount Illinois homeowners pay in property taxes is more than two times the national average.

Gonzalez said the expectation in high tax states is that their services are among the best in the nation. Illinois is an outlier in this as well. Despite near nationwide high property taxes, a report from U.S. News and World report ranks Illinois’ as only 20th in quality of education and 47th in overall government services.

Gonzalez said a property tax freeze becomes a boon to residents looking for relief from rising taxes. "It helps people to stay in the state rather than hop the border," she said. But Gonzalez says the proposed property tax freeze in Illinois’ “Grand Bargain” would not affect the majority of Illinoisans since it wouldn’t apply to larger cities with home-rule status, meaning most cities with at least 25,000 people. “While the rural municipalities might see this tax freeze program, the larger cities will not," she said.

Proponents of high property taxes to pay for education say it provides for a stable source of revenue and is much less susceptible to swings in the economy. The downside of relying on property taxes for much of the state’s education expenses is the hit to home values and the ripple effect it has on the local economy. When potential buyers are looking at homes, they consider the total cost of the monthly mortgage payment, not just the home cost. Higher property taxes mean they can’t afford nearly as much of a house payment. Illinoisans have to settle for lower selling prices just to get out from under their houses.

Housing experts say this also has a cooling effect on home sales and depresses overall home values. This slowing of turnover in home purchases, in turn, slows down the entire local construction industry, which, according to the Bureau of Labor Statistics, is Illinois’ highest paying employment sector.

**TEXAS - Property Tax: High Court Finds Components of Oil Refinery Assessment Can Be Compared**
The Texas Supreme Court has found that just as an appraisal district may choose to divide a single tract into multiple accounts for various reasons, such as the complexity of improvements, in appraising real property, a taxpayer’s complaint of unequal property taxation may be directed to only some of those accounts and not to the valuation of the whole tract.

The owner of an oil refinery protested some, but not all, of its account appraisals. The oil refinery owner complained that the appraised values of those accounts exceeded market values and were not equal and uniform compared to two other oil refineries’ appraised values.

The high court found that first, the district court had jurisdiction to hear the appeal since the taxpayer was not required to challenge all the appraisal accounts used to appraise its property. Second, the high court rejected the argument that in determining whether the taxpayer’s property had been taxed unequally as compared to the other two oil refineries, only the total valuations could be compared and not their component accounts.

The high court noted that having determined that all three of the refineries could best be appraised using different accounts for separate components, the appraising district could not, as a matter of law, argue that the values cannot be compared for determining whether one taxpayer’s constitutional right to equal and uniform taxation had been violated.

The decision of the court of appeals was reversed and the case was remanded to the district court for other issues raised on appeal.

*Valero Refining-Texas v. Galveston Central Appraisal District, Texas Supreme Court, No. 15-0492*

**Pennsylvania - Don’t like paying property taxes? Who does?**

Over the past few years, Republicans in Harrisburg have been fixated on a plan to eliminate property taxes.

On the surface, it seems like a reasonable idea to ease the burden on homeowners who are saddled with taxes that can overwhelm a mortgage. The confusion and uncertainty over Washington County’s recent property reassessment further illustrates the archaic process in which we fund our local governments and schools.

No one likes the system that’s in place. But is there a different way? And is it better, worse or somewhere in between?

Regardless, state Republicans are once again trotting out a plan to replace property taxes with higher earned income and sales taxes, and there are more questions than answers for taxpayers and government officials.

Who will be the winners and losers? We still don’t know.

One argument offered in favor of replacing the local property tax is that renters don’t pay their fair share. That’s not true. Renters indirectly pay property taxes through their monthly payments to their landlords, who then pay those taxes.

Another concern is that property taxes are crushing senior citizens. That’s understandable, but there are plenty of property tax abatement programs for seniors who own homes. If school taxes are paid mostly through earned income, that would place more of the burden on lower- and middle-class families.

One plan, narrowly defeated in 2015 by the Republican-controlled Senate, called for raising the personal income tax from 3.07 percent to 4.95 percent and increasing the state sales tax from 6 percent to 7 percent. That bill could be reintroduced this session. Any school district that wants to spend more than its state allotment would have put the tax increase on the ballot for voters to decide.

But the state has tried this before. Act 1 of 2006, also known as the Taxpayer Relief Act, gave voters the chance to decide whether they wanted to trade a higher earned income tax for lower school property taxes. It was an epic flop. The tax trade off was so poor the referendum was approved in only a handful of districts across the entire state.

Why do we think this plan would be any better?
Who receives the tax revenue — wrestling local control from municipalities and school boards — also raises serious questions. Peters Township School Board has already expressed concerns, which certainly would be echoed by other school districts in the state.

“We are going to be at the beck and call of a state government (that) is going to choose how much money we get,” Peters board member Lisa Anderson said in January. “And if we want to do a special program and they’re not going to give us money, we can’t do the special program.”

If a school district wants to do those special programs or negotiate its teachers contract or build a brand new school, it will be beholden to the state. Good luck ever getting a tax increase approved by voters.

Sen. Guy Reschenthaler, R-Jefferson Hills, told a packed auditorium at Canon-McMillan High School he also has concerns.

“It’s going to shift control away from our local governments, our local school boards, and it’s going to put all the control to Harrisburg,” Reschenthaler said.

No one likes to pay property taxes and all options should be considered. But an increase to the earned income tax and sales tax could cause unintended consequences and create long-term problems we’re not prepared to solve.

NEW JERSEY - New Farmland Assessment Reveals ‘Fake Farmers’ Still Getting Tax Breaks

Faux farmers and hobby farms are still helping celebrities, politicians, and companies qualify for lowball property-tax assessments

Four years ago, New Jersey enacted a law making it tougher to qualify for a preferential farmland property tax assessment in an effort to weed out “fake farmers.”

With the new rules now in effect, the law may have led to a small reduction in the number of properties considered farms for tax purposes and in the total value of farm parcels, but whether it wound up forcing “fake farmers” to pay their fair share in taxes is questionable.

The most significant change the 2013 law made in the farmland assessment program was to increase the amount of agriculture-related income a property had to receive from $500 to $1,000 on the first five acres of land in order to get a generous tax break: Qualified farmland is assessed at just a fraction of the property taxes levied on other land. That change took effect in 2015, but was not reflected until the most recent state Division of Taxation farmland assessment report, for the 2016 fiscal year.

An analysis of data from the farmland report found that the total number of farm-qualified parcels — 36,742 in the past fiscal year — had dropped by 1 percent from the prior year. The total of value of farmland assessments was about $1.5 million lower in 2016 than in 2015, down to $417.6 million. But many dubious “working farms” continue to enjoy reduced taxes due to farmland-assessed properties. These include:

- Businesses — the Whibco sand and construction aggregates producer and PSE&G in Cumberland County, Exxon in Hunterdon, the Hercules brownfields site in Morris, and Six Flags Great Adventure in Ocean;
- Developers — Toll Brothers, Thompson Realty, Western World;
- Celebrities — rockers Bruce Springsteen and Jon Bon Jovi and publisher Steve Forbes;

And even if you consider it a victory that qualified farmland parcels have been reduced by 1 percent, Willem Rijksen, a spokesman for the state treasurer's office, cautioned that those declines cannot necessarily be attributed to the change in the rules to qualify for farmland assessment.

“Farmland data is not tracked in a way that would reveal changes that are attributed to the new law,” he said, adding reductions could also be attributable to some farm owners selling their land for non-farming purposes or others simply choosing not to farm.
Still, Sen. Jennifer Beck (R-Monmouth) and a driving force behind the revisions, found the data a positive sign that the law is working.

“...I think that the preliminary results are positive, in that the new standards are weeding out people who are not serious farms and may not actively be working the land, but were taking advantage of the tax break,” said Beck, a prime sponsor of the law.

But Jeff Tittel, head of the New Jersey Sierra Club, said the numbers show that the change was a “faux fake farmers” reform.

“It just put a veneer on it and still allows it to happen,” he said, noting that many properties that are not primarily farms are still receiving the farmland assessment benefit.

One parcel of land Frelinghuysen owns in the Warren County township named after one of his ancestors may be an exception, though. A Route 94 parcel of 8.4 acres continues to be farmland-assessed at $3,900, with a tax bill of $95.20 last year. But a nearby parcel came off the farmland rolls in 2015. When it qualified in 2014, the 9.53-acre parcel was valued at $4,400, but last year, assessed as vacant land, its value jumped to $146,200 and its tax bill increased by more than 3,000 percent to $3,569. In this case, the 2015 law may be responsible for the huge difference in assessments.

Peter Furey, executive director of the New Jersey Farm Bureau, agreed that the new rules probably did not result in a significant impact on farm acreages and assessments.

“The qualification issue normally affects minimum-acreage parcels,” he said, referring to properties of around five acres. “Landowners newly at risk of earning or losing the qualification will adjust their income-earning practices to maintain qualification.”

Frank Pinto, a Chester-based consultant on farmland assessment, open space, and related issues, said the revision most affect the owners of very small horse farms.

“These are hobby farms,” said Frank Pinto, former head of the Morris County Agriculture Development Board and the county’s Preservation Trust Fund. Under the old rules, a horse farm could use five acres of pastureland for grazing to qualify but now the value of that land is not enough to reach the $1,000 threshold, he said. Here’s the issue: If a landowner don’t sell at least $1,000 in farm-related goods now — as opposed to $500 before the 2013 law — the land cannot qualify as farmland and is assessed at the higher value, which means that the owner must pay full taxes. “You have to have some other agricultural activity, such as hay or breeding.”

“Indeed, there were many who, learning of the new standards, simply do not do enough agricultural activity to qualify under these standards and had to give up their farmland assessments,” Beck said.

Although some reports had estimated about 40,000 acres of farmland would not qualify under the new rules, the data shows the number of farm-assessed acres actually increased by about 3,500 between 2015 and 2016 to 969,305 in total.

Furey said it was never clear how many properties might be affected, but the Farm Bureau supported the change to give assessors the ability to better determine who is really farming and who may just be looking for a tax break.

“There is no doubt that a new mentality has taken hold among the assessors,” he said, indicating that they are looking more critically at farmland-assessed properties to ensure they genuinely qualify under the revised law. “The impact may not show up in the numbers dramatically.”

Pinto said there were changes in the law that make assessors accountable for ensuring that property owners really do qualify for the preferential tax treatment. With tax dollars involved, it’s important to show that any breaks are given to those who follow the law. But the special assessment also serves to help keep land in the most densely populated state in the nation open and green, which is a benefit to the public.

“While it may appear that someone is not paying his fair share, New Jersey is still among the highest, if not the highest, state for farm-assessed land,” Pinto said. “And the owner still pays the same taxes on the farmhouse and its property as everyone else.”

But Tittel said the assessment still too often benefits those who are not really farmers — the corporations and land speculators — at the expense of others in a given municipality or county.
“The part everyone forgets is that if they (farmland-assessed properties) are not paying their fair share, everyone else does,” he said. “That is still the case.”