



# UNITED STATES - December 2017

**HOMEOWNERS RUSH TO PREPAY PROPERTY TAXES BEFORE REPUBLICAN TAX LAW’S LIMITS ON ‘SALT’ DEDUCTIONS KICK IN ..... 1**

**IRS ADVISORY: PREPAID REAL PROPERTY TAXES MAY BE DEDUCTIBLE IN 2017 IF ASSESSED AND PAID IN 2017.... 2**

**TAXES MATTER BUT IS IT REALLY ARMAGEDDON? ..... 2**

**WISCONSIN - LEGISLATORS SHOULD END 'DARK STORE' COMPARISONS ..... 4**

**PENNSYLVANIANS APPROVE PROPERTY TAX REFORM ..... 4**

**NORTH CAROLINA - ASSESSOR STARTS 2019 REVALUATION PROCESS, EXPECTS PROPERTY VALUES TO JUMP ..... 5**

**NEW YORK - WAL-MART DISTRIBUTION WANTS ASSESSMENT SLASHED ..... 6**

**NEW YORK - JUDGE SIDES WITH SOUTHGATE PLAZA OVER WEST SENECA TAX ASSESSMENT ..... 7**

**NEW MEXICO - OIL AND GAS GROUP DEFENDS TAXES ON SELF-REPORTED ASSETS ..... 8**

**NEW JERSEY - RIDGEWOOD REWARDS LOCAL SHOPPERS WITH SAVINGS ON PROPERTY TAX BILL ..... 9**

**MICHIGAN - SHINING MORE LIGHT ON "DARK STORES" ..... 10**

**MAINE - RULING COULD COST SCARBOROUGH AN ADDITIONAL \$1.2 MILLION TO SETTLE 4-YEAR-OLD PROPERTY TAX DISPUTE, LAWYER SAYS ..... 10**

**ILLINOIS - I SPENT YEARS REPORTING ON CHICAGO’S PROPERTY TAX SYSTEM. HERE’S WHAT GOT ME OUT OF THE WEEDS. .... 12**

**ILLINOIS - COOK COUNTY ASSESSOR BERRIOS FACES MORE HEAT ..... 13**

**ILLINOIS - THE COOK COUNTY ASSESSOR’S OFFICE IS ONLY THE FIRST STEP ..... 13**

**ILLINOIS - BERRIOS SUED FOR ALLEGEDLY BIASED PROPERTY TAX ASSESSMENTS ..... 14**

**ARIZONA - NEW CRE GROUP FORMS TO PUSH PROPERTY TAX REFORM ..... 15**

**[Homeowners rush to prepay property taxes before Republican tax law’s limits on ‘SALT’ deductions kick in](#)**

Local treasurers’ offices are describing the rush as ‘insane’

Homeowners across the nation are rushing this week to prepay their property taxes for 2018 before the Republican tax law kicks in Jan. 1 and effectively raises the levy on higher-end homes.

The new legislation, which President Donald Trump signed into law last week, caps at \$10,000 the amount of state and local taxes that filers can deduct from their federal tax bill. That means those whose tax bills regularly exceed that amount could benefit by paying more tax in 2017, when the deduction has no limit.

**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.

Local offices in a number of states saw a busy post-Christmas rush on Tuesday as taxpayers calculated the effects of the new law. In Fairfax County, Va., where property values have risen sharply in recent years, hundreds of people lined up at the government center to prepay. Across the Potomac River, in Montgomery County, Md., the county council held a special session Tuesday morning to pass legislation allowing residents to prepay their taxes.

The new tax law “is a middle-class tax hike for us, and we’re trying to postpone at least some of that for at least one more year,” said Montgomery County Council President Hans Riemer.

### **IRS Advisory: Prepaid Real Property Taxes May Be Deductible in 2017 if Assessed and Paid in 2017**

The Internal Revenue Service advised tax professionals and taxpayers today that pre-paying 2018 state and local real property taxes in 2017 may be tax deductible under certain circumstances.

The IRS has received a number of questions from the tax community concerning the deductibility of prepaid real property taxes. In general, whether a taxpayer is allowed a deduction for the prepayment of state or local real property taxes in 2017 depends on whether the taxpayer makes the payment in 2017 and the real property taxes are assessed prior to 2018. A prepayment of anticipated real property taxes that have not been assessed prior to 2018 are not deductible in 2017. State or local law determines whether and when a property tax is assessed, which is generally when the taxpayer becomes liable for the property tax imposed.

The following examples illustrate these points.

**Example 1:** Assume County A assesses property tax on July 1, 2017 for the period July 1, 2017 – June 30, 2018. On July 31, 2017, County A sends notices to residents notifying them of the assessment and billing the property tax in two installments with the first installment due Sept. 30, 2017 and the second installment due Jan. 31, 2018. Assuming taxpayer has paid the first installment in 2017, the taxpayer may choose to pay the second installment on Dec. 31, 2017, and may claim a deduction for this prepayment on the taxpayer’s 2017 return.

**Example 2:** County B also assesses and bills its residents for property taxes on July 1, 2017, for the period July 1, 2017 – June 30, 2018. County B intends to make the usual assessment in July 2018 for the period July 1, 2018 – June 30, 2019. However, because county residents wish to prepay their 2018-2019 property taxes in 2017, County B has revised its computer systems to accept prepayment of property taxes for the 2018-2019 property tax year. Taxpayers who prepay their 2018-2019 property taxes in 2017 will not be allowed to deduct the prepayment on their federal tax returns because the county will not assess the property tax for the 2018-2019 tax year until July 1, 2018.

The IRS reminds taxpayers that a number of provisions remain available this week that could affect 2017 tax bills. Time remains to make charitable donations. See IR-17-191 for more information. The deadline to make contributions for individual retirement accounts - which can be used by some taxpayers on 2017 tax returns - is the April 2018 tax deadline.

### **TAXES MATTER BUT IS IT REALLY ARMAGEDDON?**

Nancy Pelosi, minority Democrat leader of the House of Representatives may have lost her way in the jungle of hyperbole when she described the recently passed Tax Cuts and Jobs Act (“TCJA”) as “Armageddon.” The standard definition of Armageddon is the last battle between good and evil that takes place before the Day of Judgment. While the TCJA is certainly an act of legislative vandalism passed by politicians more focused on their own political survival than the good of the country, it is not the end of the world.

#### **Cash for the Local Authorities**

In a mad scramble before the year-end, town halls are experiencing long lines of angry taxpayers looking to prepay their 2018 property taxes. It is too early to estimate how many millions of early 2018 payments this rush will generate but it is likely to be considerable. This melee of taxpayers parting with their money early has been triggered by the limit imposed for tax years after December 31, 2017 on the deductibility of state and local taxes, including property taxes. This limit of \$10,000 applies to state and local income taxes and to local property taxes.

#### **International Property Tax Institute**

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Scarsdale, New York, is a wealthy suburb of Manhattan that prides itself on its excellent school system. The median house value in 2016 was \$1.6 mn, which, at an assessment rate of 2.33% of market value, leads to a median property tax of approximately \$37,000, almost four times the permitted deduction for 2018 onward.

Scarsdale is part of the larger Westchester County where, while house values on average are lower than Scarsdale (just over \$1m), property taxes are significantly more than the \$10,000 limit at a median of just under \$14,000. This, of course, is just property taxes. Taxpayers in these areas can expect no deduction for state and local income taxes. The maximum marginal income tax rate in New York in 2017 is 8.82%, which, if it is fully deductible against federal taxes at a top marginal rate of 39.5%, translates into an effective rate of 5.33%. In other words, the top marginal rate of tax in New York state for 2017 is 44.83% (it is higher in Manhattan – just over 47% because of city income tax). In 2018, the top marginal federal rate of 37% will simply be added to the New York state tax rate for a combined rate of 45.82% (49.7% for Manhattan).

It is not surprising that taxpayers are seeking to prepay their 2018 property taxes in 2017 when they are fully deductible. The alternative minimum tax creates some complexity, but the consensus seems to be that prepayment is worthwhile. This, of course, may not be what was intended by the politicians. The TCJA contains a specific provision that prevents deductibility for any attempt to prepay 2018 income taxes. The IRS has also sought to create doubt and confusion as to whether prepaid property taxes will be permitted. Local authorities have been rushing to make sure their systems have raised a tax levy for 2018 by the end of 2017. Where the expense category is already known, they can do this. What they cannot do is to accelerate all their 2018 budget processes into the last few days of 2017.

Scarsdale voted 75% for Hillary Clinton in 2016; Westchester County, 63%. GOP commentators deny the limitation on the deductibility of state and local taxes was targeted at so-called blue, or Democratic states. The evidence suggests otherwise: all ten of the states with the highest total tax burden voted for Hillary Clinton in 2016. Elections have consequences.

Why are People so Passionate about Taxes?

If the 3.8% investment tax is added to the above combined tax totals, taxpayers in the highest income brackets will pay nearly 55% of their income in taxes. Tax Freedom Day for these taxpayers – the day when they will have discharged their tax burden and begin to generate their own bottom line – will be June 18, 2018.

Considered this way, the highest income earners in Manhattan will be working another week for the government starting in 2018. That statistic is unlikely to generate much sympathy from most of a population where the median income is just under \$60,000 (the top tax rate applies to income over \$600,000) and the median property tax bill is approximately \$2,000. It will simply solidify the anti-Republican bias in these states.

The TCJA is really all about the corporate tax regime and, because the perception is that the GOP is simply lying, as it mostly does and has, about the effect of trickle-down economics, the adverse reaction will grow over the next twelve months as CEOs increase share buybacks and dividends as many have said they intend to do.

Taxpayers will notice that there is no dividend in the form of infrastructure spending. They will notice as healthcare premiums increase because of the repeal of the individual mandate. They will notice as the cost of educating their children increases. They would notice – if the President were ever to disclose his tax returns – that the tax advantages for those in the business of owning real estate are increasing. They will notice as the GOP mounts its attack on entitlements in the name of fiscal prudence and wonder why the same GOP that has just agreed to increase the deficit by \$1.5trn over the next ten years chose to prefer corporations and their shareholders over food stamps, Medicaid and Medicare.

People are passionate about taxes because they don't like the feeling of the government having its hand in their pockets: they prefer to hang on to the money they earn. They are prepared to hand it over if they trust the government will spend in ways consistent with their values and their views of how the social safety net on which we all, but for the grace of God and circumstance may well come to rely, should be funded.

They will not be happy to see the government hand over billions of dollars in tax reductions to corporations in the hope that those corporations will hand it back in the form of jobs and investment. They may feel that is a tawdry bargain: a leveraged return on lobbying dollars spent and favors repaid and a massive exercise in self-dealing on the part of a corrupt administration.

The TCJA is not Armageddon but it is moving the US closer to a dystopian future of inequality, anger and expanding social divisions.

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### WISCONSIN - Legislators should end 'dark store' comparisons

A move by big-chain retailers to drive down their property bills in municipalities around the state simply doesn't make sense.

Many of these retailers are using what's being called a "dark store" theory. It works like this: They say their taxes assessments should be based on comparable stores, even if those stores are vacant, or "dark."

Eau Claire-based Menards used the dark store theory this year when it sued the village of Howard over its 2017 assessment. The retailer opened its Howard store in 2012 on 18.6 acres, spending \$10.6 million on land and buildings. The village assessed the store and property at \$12.45 million; Menard Inc. said the assessment should be \$5.8 million.

The retailer based this in part by comparing the Howard site, which is open and operational, to a closed Home Depot in Beaver Dam, a closed Sears in Sheboygan, and to the former Cub Foods on Green Bay's east side, which had been closed since 2009. (Two stores have since moved into the Cub Foods building, but it was vacant at the time of the lawsuit being filed.)

The closed Cub Foods building was assessed about \$40,000 a year in taxes; the tax bill for the Menards in Howard was about \$209,000 for 2017.

Menards eventually dropped its lawsuit against Howard.

Yet the claim that an open big-chain retailer should be assessed the same as a store that has been closed for eight years doesn't make any sense. Those vacant stores aren't earning any income for retailers, but the open stores are. The vacant stores require very little police and fire protection; operational stores are a big user of those services. Infrastructure is added in communities to get customers, employees and goods to those stores, as well as heat and electricity.

This isn't an isolated case. A USA TODAY NETWORK-Wisconsin investigation found 130 "dark store" cases filed by big-box stores since 2014 against municipalities statewide. Of those cases, 67 are open. If each of those is settled, local governments would lose about \$774 million in taxable property value, our analysis determined.

In Brown County, there are two open cases — a Walmart suit against Bellevue and a Woodman's case against Howard. A Menard's case in Bellevue was settled in 2016.

If the Menard's suit in Howard had gone against the village, about \$111,000 in school, village and county tax payments would have been refunded, including \$55,000 from Howard-Suamico schools.

Find 'dark store' lawsuits in your community

The tax burden would have fallen on the very people and communities that support the store.

Two bills – Senate bills 291 and 292 – would end the "dark property" comparison and clarify that lease agreements cannot be factored into property valuations.

The bills have bipartisan support in the Legislature, however, neither has been brought to the floor.

It's time for the Legislature to protect taxpayers and homeowners.

Yes, businesses should be taxed fairly, but don't base the tax assessment of a working store on that of a vacant, closed operation. It makes no sense.

### PENNSYLVANIANS APPROVE PROPERTY TAX REFORM

Pennsylvania voters approved a ballot question amending the state's constitution to allow the General Assembly to give local taxing agencies the power to grant full property tax exemptions.

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Before voters approved Resolution 1 in November 2017, the state constitution allowed local governments to grant homeowners property tax exemptions of up to 50 percent of their home's median assessed value. The amendment allows the General Assembly to pass a law increasing the maximum value of a homeowner's property tax exemption to 100 percent.

#### More Tools in the Toolbox

State Sen. David Argall (R-Schuylkill County), sponsor of Senate Bill 76, a bill that would shift local school property taxes to state income, property, and sales levies, says the resolution gives the bill's supporters more tools to work with.

"With the approval of this referendum, we now have several more options in the Senate to move school property tax elimination forward that we did not possess before the election," Argall said. "I will soon meet with the grassroots advocacy groups that are pushing for school property tax elimination to select our best options."

#### Reforming Taxes and/or Spending

Bob Dick, a senior policy analyst for the Commonwealth Foundation, says the ballot question's approval shows Pennsylvania taxpayers want property tax reform.

"The vote is definitely an indication that we have to do something about property taxes," Dick said. "The question, though, is what the best way forward is."

Dick says the state should reduce government spending instead of shifting around taxes.

"What [I] would prefer is to address the spending side of the equation rather than shifting the tax burden," Dick said. "We have to focus on reducing costs in state and local governments."

#### No Easy Answer

Jay Himes, executive director of the Pennsylvania Association of School Business Officials, says property tax reform will still take time.

"I don't know that there is a hidden plan ready to be foisted on Pennsylvanians in the next few days," Himes said. "The issue has always been about the fine print in the tax plans. If the process was easy, it wouldn't have taken this long to figure it out."

### **NORTH CAROLINA - Assessor Starts 2019 Revaluation Process, Expects Property Values To Jump**

Mecklenburg County houses and commercial buildings are due for another property revaluation in 2019. Values are expected to jump. The last one in 2011 had to be redone because of errors. The county assessor says this time will be different.

County appraisers will spend the next year looking at sales data and setting new values for Mecklenburg County's 375,000 properties. When new valuation notices go out by Jan. 1, 2019, it will have been eight years since the last revaluation - the maximum allowed by state law.

Blame that on the botched 2011 appraisals. After lots of complaints about outsized increases and outdated records, state lawmakers ordered the county to re-do the assessment.

"Probably the number one reason we're sitting here with an eight-year revaluation again was just the amount of time and effort it took to complete that process mid-cycle," said Mecklenburg County Assessor Ken Joyner.

Joyner was hired in 2013, after all the trouble, and after the previous assessor resigned.

His analysis of what happened in 2011: "There was not enough communication, not enough opportunities for citizens to be heard. Maybe not enough transparency with sales and other information where people could really dig in and see what was going on in their own markets."

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Joyner says after the 2011 re-do, about 7 of every 10 valuations (69 percent) were unchanged. But 23 percent went down, resulting in about \$100 million in refunds. And 8 percent saw increases, which brought in more than 20 million dollars.

His office has more employees this time - 120 instead of 75 or so. The office has new tools, including an online program that lets owners check the accuracy of property records - like the number of bedrooms or square footage. And Joyner says training and customer service will be better.

#### BIG INCREASES?

There could be big increases again this time around. Joyner said with real estate prices rising steadily since 2011, values for the county's 320,000 residential properties could be up an average of 30 percent.

"Many people think when we go from old values to the new that that's a one-year increase. But it's actually the reflection of the market changes over an eight-year period," Joyner said.

But that won't necessarily mean higher tax bills. Any change in taxes would depend on whether your property gains more or less value than the average overall.

Meanwhile, Joyner says he expects the next revaluation after this one to happen quicker – in four years. But that's ultimately up to the county commission.

#### **NEW YORK - Wal-Mart Distribution wants assessment slashed**

The Wal-Mart Corporation is challenging the tax assessment on its Sharon Springs Distribution Center—something that could have serious local financial implications if it's successful.

The Route 20 facility, built in 1995, is assessed at \$59 million, a figure based on construction costs, officials said.

But in a notice of petition filed six months ago, Wal-Mart is seeking to have that figure slashed to \$15.8 million.

Because Wal-Mart makes payments in lieu of taxes--\$975,000 a year under a 10-year PILOT renegotiated in 2015, if the challenge is successful, the impact on taxes won't be felt immediately; Wal-Mart will continue to make the PILOT.

But a lower assessment would change the distribution of sale tax revenues, and it would hit especially hard in the Village of Sharon Springs, where water and sewer revenues are based in part on assessments.

As a first step toward challenging the move, Sharon Springs Central School, the Town of Sharon, and the Village of Sharon Springs have all agreed to chip in toward the cost of an independent appraisal of the property, along with associated legal fees, and Schoharie County Treasurer Bill Cherry is expected to advise supervisors to do the same Friday.

The Vincelette Law Firm out of Albany, which has experience in dealing with other Wal-Mart sites, will be handling the job at a cost of about \$30,000.

Because it receives 40 percent of the PILOT, SSCS will pick up 40 percent of that cost with the other entities dividing the rest equally.

"Information is always good and we all need to know what the Distribution Center is really worth," said SSCS Business Manager Tony DiPace. "But after that...we're going to have to evaluate."

Sharon Supervisor Sandra Manko said much the same thing Thursday.

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"This is just step one," she said. "Then we'll have to step back and see where we go from there. It's a first step."

With little discussion, the Village of Sharon Springs also agreed to fund its portion of the bill Thursday.

But according to Mr. Cherry, that's where the impact of any change in the assessment will hit first.

Not only would the village see a drop in sales tax revenues as the total value of its assessed properties goes down, it would also see a drop in water and sewer revenues collected from Wal-Mart because they, too, are based in part on Wal-Mart's assessed value and not just usage.

"And though the biggest impact would be on the Village of Sharon Springs, there are implications for all of us," Mr. Cherry said.

If the independent appraiser finds Wal-Mart's figure of \$15 million is correct, taxes would be \$750,000 annually—less than the PILOT, which runs to 2025.

"They could say 'Just send us the tax bill,'" Mr. Cherry said.

"And even if we settle somewhere in the middle, what do we do when the current PILOT expires? The facility is worth a lot more than \$15 million..."

"I have a lot of compassion for the village," added Mr. DiPace.

"If Wal-Mart's successful, they're going to be paying a lot less in village water and sewer revenues. And that's going to shift the burden to everyone else. But there's only so far the school district can go."

Among those who would also feel the impact are the Sharon Springs Free Library and the Fire District, which as special districts collect about \$78,470 combined through the Wal-Mart assessment.

According to Mr. Cherry, if the Wal-Mart assessment is cut to say, \$30 million, the amount the two collect would be cut to about \$39,000 million.

"The special districts would probably increase the tax rate per thousand for everyone in the district to compensate for the lost revenue," he added in a December 1 letter to Ms. Manko.

#### **NEW YORK - Judge sides with Southgate Plaza over West Seneca tax assessment**

The owners of Southgate Plaza in West Seneca won a court-ordered reduction in the shopping center's tax assessment, after accusing the town of selectively increasing its valuation based solely on a new gym taking over some former storefront space.

State Supreme Court Justice Henry J. Nowak ruled in favor of the challenge by Southgate Associates LLC earlier this month, saving the plaza's owners about \$41,000 in annual taxes on one of the largest properties in the town.

"It's something we vigorously litigated," said attorney Peter Allen Weinmann, who represented the ownership group, which includes the Campofelice family. "We are pleased with the result, although we feel there is more room for the assessment to go down further."

But the battle isn't over yet, as West Seneca "believes it is correct on the law," and plans to file an appeal Wednesday morning, Town Attorney John J. Fenz said. He noted that Nowak's ruling acknowledged that the town had shown that its assessments "are done equitably across the board."

"The judge's decision as it stands would unfairly benefit the plaintiff to the detriment of the town's other taxpayer," Fenz said in an emailed statement. "The Town will continue to vigorously defend this lawsuit and look forward to taking the next steps in the interest of all of its taxpayers."

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Built on former farmland in 1954 by banker-turned-developer Carl J. Lambein, Southgate has 550,000 square feet of commercial space, with about 100 retail and office tenants, employing over 1,500 people. It was acquired from the Lambein family in late 2012 for \$17 million. It's one of the most highly valued properties in the town, but not the biggest.

Southgate Associates had challenged the town's reassessment of the plaza for the 2016-2017 tax year, calling it "unlawful" and "illegal" in its lawsuit.

The property at 3977 Seneca St., at Union Road, had been assessed at \$8,411,510 for each of the prior two years, but the town raised it to \$8,905,500 specifically because the owners replaced retail space with a gym, according to court documents that cited an "impact notice" from the town.

In West Seneca, properties are assessed at about 40 percent of fair market value. So that in turn resulted in an increase in fair market value from \$20.03 million to \$22.26 million, based on the town's equalization rates at the time.

State law specifically bars an assessor from reassessing only properties that were recently sold or improved. Rather, reassessments must be based on a municipal-wide plan and applied consistently to all similar properties.

But in court documents, the plaza owners said the West Seneca assessor "did not uniformly consider the assessment of other similarly situated properties in the town." Additionally, the investor group said, "no such plan to do so existed" for the town.

Nowak agreed, ordering the assessment for the plaza be reduced to \$8,411,510. Using the current equalization rate of 40 percent, that yields a fair market value of just over \$21.029 million.

As a result, the plaza's total town, county and school tax bill would fall from \$734,580 to \$693,957.

Nowak also ordered that the town, Erie County and the West Seneca Central School District must refund any overpayment within 45 days.

Weinmann plans to file new paperwork with the town to keep that new assessment for the current year.

Meanwhile, Southgate Associates continues its larger legal battle with the town to reduce the assessment even further, bringing the fair market valuation down to \$15 million. The group had unsuccessfully sought a change from the town's Board of Assessment Review for all three years before also filing a special tax lawsuit.

### **NEW MEXICO - Oil and gas group defends taxes on self-reported assets**

A representative of the oil and gas industry said personal property taxes are just a small portion of total taxes paid by the energy sector and if local assessors do not believe collections are accurate, they should go directly to the industry rather than hire outside experts.

Patrick Padilla, deputy director of the New Mexico Oil and Gas Association, was invited to speak to state lawmakers Monday in response to a presentation given in October by an appraisal consultant working with three New Mexico counties.

That expert, Jerry Wisdom, of Total Assessment Solutions, claimed many assets held by energy firms in the field — such as pipelines, compressors and drilling rigs — are not on the tax rolls or are being undervalued.

Wisdom claimed his team of appraisers has recouped millions in lost tax money for local governments in New Mexico and elsewhere, and county governments do not have the staffing or expertise to make sure existing assets are properly assessed and are paying taxes to local governments, which support schools and community services.

"We deal with these companies, and we know how they report property," Wisdom told lawmakers on Oct. 30. "It's all self-reporting; this is the process we go through to find these items. These omissions are creating an inequity among the other taxpayers."

But Padilla said many taxes in New Mexico are based on self-reported assets.

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“There has been some implication that industry creates rules as we go along,” Padilla told the Revenue and Tax Stabilization Committee Monday. “I don’t think anyone in the industry would knowingly shirk their responsibilities.”

He added there are a lot of industries that self-report.

“If I were to remodel my house I have an obligation to go down to the local assessor office and my value might increase. To say the oil and gas is self reporting and that opens itself up to fraud is not true,” Padilla said.

Padilla and many lawmakers from oil-rich counties also pointed out the oil and gas industry is the biggest driver of the state economy and pays gross receipts tax on just about every business purchase, as well as on payrolls, leases, licenses, vehicles, fuel and rental equipment.

The total tax on the industry amounts to 9 percent or 10 percent, the highest in the United States except for Alaska and Wyoming, said James Strickler, R-Farmington, and a petroleum landman.

“We pay our fair share of taxes and then some,” he said.

Sen. John Arthur Smith, D-Deming and an appraiser himself, reiterated that the issue is one of equity. “Some of the industry is on the tax rolls and some of the industry isn’t,” he said. “It’s about 50-50 that puts some at a competitive disadvantage.”

But Padilla said if there are problems, state tax officials or local appraisers should come to the companies directly. “We want to make sure the best information gets out there and the state is made whole,” he said.

### **NEW JERSEY - Ridgewood Rewards Local Shoppers With Savings On Property Tax Bill**

A Bergen County village has a new property tax savings program that aims to encourage residents to shop locally in exchange for a break on their tax bill.

Property taxes in Ridgewood, New Jersey are among the highest in the state.

“It is very painful,” Jenny Stillman said.

Now, the village is offering prepaid debit cards. Instead of points or miles, you get tax relief. It’s called the estate card. It’s run by Municipal Cards Incorporated.

“Our modeling shows that the average person, if they are using this card as their everyday spending, they’ll save 20 percent of their property tax through the program,” Municipal Cards CEO, Eli Weingarden said.

Every dinner out or gift purchased with the Ridgewood Estate Card could help reduce a tax burden ever so slightly.

“Seems like it would be a no-brainer if it can also reduce our taxes,” Jenny Stillman said.

Cardholders add money every month to their accounts to receive a base .2 percent off their property taxes on purchases at participating national retailers like Walmart, and local merchants like Trattoria La Bocca.

Businesses are usually charged a fee for swiping a credit card, but with the estate card the fee is rebated back to the customer towards their third quarter property taxes.

Councilman Ramon Hache said this will also help local businesses compete with online retailers by offering extra bonus discounts.

“So if you are coming into town and making a \$100 purchase, merchants apply 10 percent discounts. You still pay \$100, but merchant credits 10 percent or \$10 to an account at village hall that got towards paying property tax liability,” he said.

Businesses hope it will keep shoppers in town.

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"I think people shop online more, not just malls, and I think now there is an incentive for them to stay local," Heather Rozzi said.

For the village it comes with an added advantage — revenue comes in on a monthly basis instead of quarterly.

For consumers there is no monthly cost, spending requirement, or limit on the cards. The more you shop, the more tax dollars you save.

Municipal cards are also available in Bridgewater and East Brunswick.

The company said it takes a few pennies from each transaction.

### **MICHIGAN - Shining More Light On "Dark Stores"**

The "Dark store theory" may be a misnomer, but its impact is felt by local governments. A recent court ruling may impact how the tax appeals are determined in the future.

WMUK's Sevilla Mann recently reported on the dark store theory for NPR. She takes a deeper look at how companies, usually big box retailers, appeal to lower their property tax bills.

The Michigan Tax Tribunal has been hearing many of these appeals and siding with the companies, granting the lower property tax bills. The retailers search for "comparable properties" to compare their assessment. They argue that property tax is paid on the property, not what it's in the store. So the companies say there's nothing wrong with comparing an open store with a closed one.

But officials with local units of government, argue that it's important to know why the property is vacant. Is it because they are in a part of town that was once a busy shopping area that has since fallen out of favor? Some of those closed stores also have deed restrictions, that prevent a competitor from moving in. Local government officials say that also skews the value of the property.

State Representative Dave Maturen has proposed legislation to limit the "dark store" appeals. The Republican represents parts of Kalamazoo and Calhoun Counties has a background in property assessment.

Maturen told Mann that local units of government, are already pinched financially. He says the rulings from the tax tribunal have squeezed their budgets more. Maturen says many of those communities can't afford to take the issue to court.

But the Upper Peninsula town of Escanaba did file a lawsuit over the new assessment granted to Menards for a store in their town. The Michigan Tax Tribunal found in favor of Menards, but the Michigan Court of Appeals found that the tribunal has failed to consider the impact of the deed restrictions on the property. The Michigan Supreme Court upheld the Appeals Court ruling. That sends the case back to the Michigan Tax Tribunal.

Critics of the "dark store theory" hope the court ruling sets a new precedent. But the case isn't over, because the tax tribunal has to issue a new ruling on the Menards in Escanaba. More battles over how big box stores are valued are likely in Michigan and other states.

### **MAINE - Ruling could cost Scarborough an additional \$1.2 million to settle 4-year-old property tax dispute, lawyer says**

Prouts Neck and Higgins Beach residents went to court after the town rejected tax abatement requests similar to those given other homeowners on abutting lots they own.

A new court ruling could cost the town an additional \$1.2 million to settle a 4-year-old property tax dispute in favor of 52 waterfront residents.

So says a lawyer for the residents, who challenged the fairness of a little-known but widespread practice among Maine's municipal assessors of giving tax breaks to homeowners for adjacent vacant lots that they also own.

### **International Property Tax Institute**

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The so-called abutting property program, which has been permitted by state revenue officials, resulted in assessment reductions on about 110 properties in town, ranging from a few thousand dollars for inland parcels to a few million for waterfront properties. Some homeowners saved as much as \$60,000 in yearly taxes.

The 52 residents of Prouts Neck and Higgins Beach went to court in 2014 after the town's Board of Assessment Review rejected their requests for abatements on their rising tax bills.

In August 2016, the Maine Supreme Judicial Court found that the town's practice of randomly undervaluing separate adjacent lots at the request of individual landowners violated the constitutional requirement for equal taxation.

The court also found that the practice violated state laws that call for each lot to be assessed separately and at just market value, and it directed the assessment review board to make "appropriate abatements."

This month, a Superior Court judge ruled on appeal that the \$463,477 in abatements that the town divided among the 52 residents in September didn't square with the tax breaks granted to homeowners in the abutting property program in fiscal 2013 through 2016.

#### 'INDEFENSIBLE' ABATEMENTS

The \$463,477 reflected \$395,398 in tax breaks that the town gave to 19 homeowners who were still benefiting from the program in fiscal 2016, plus 7 percent annual interest.

The town divided the money among the 52 residents who brought the lawsuit, effectively giving each homeowner an 8 percent reduction in their land assessments over the four years. The average overall abatement was \$8,913 per taxpayer.

In his order this month, Justice A.M. Horton found that the town's formula to reach the abatement amount was "indefensible" because it was tied to the number of plaintiffs in the group.

"As the taxpayers point out, the way the board has structured the abatement means that, had there been five in their group instead of more than 50, the abatement for each would be 10 times greater," Horton wrote. "Had there been 500 in the taxpayer group, the abatement for each would be one-tenth of what it is."

Horton directed the town's Board of Assessment Review to recalculate and issue new abatements that will put the 52 residents "in a position roughly equal" to the 19 homeowners who were "favored" by the abutting property program.

The 52 residents had asked the board to grant them abatements that reflected the percentage discount off market value that the 19 homeowners received through the abutting property program, which the plaintiffs figured to be 31.48 percent.

At that rate, the total abatement to be divided among the 52 residents would be about \$1.6 million, plus 7 percent annual interest, said William Dale, a lawyer with Jensen Baird who represented some of the plaintiffs.

#### STATEWIDE PRACTICE

Town Manager Tom Hall declined to comment on Dale's assessment that the town owes the plaintiffs a total of \$1.2 million.

The Board of Assessment Review has yet to schedule a meeting to act on the ruling. The Town Council is set to discuss the ruling with the town's attorney in executive session on Wednesday.

What impact this case might have on municipal assessing practices statewide remains to be seen. A call to Justin Poirier, acting director of the Property Tax Division at Maine Revenue Services, went unanswered Wednesday.

While Maine's high court blasted Scarborough's practice of randomly undervaluing separate adjacent lots, it upheld the practice of assessing lesser used or unused portions of larger single lots at a lower rate – as long as it reflects fair market value.

Municipal and state assessing officials testified during Scarborough's abatement hearings in 2013 and 2014 that the practice of combining separate lots with shared ownership for assessment purposes was common across the state.

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They pointed to a state law, Title 36, Section 701-A, that allows contiguously owned parcels to be combined for assessment purposes.

The law stipulates that it applies to “unimproved acreage in excess of an improved house lot ... when each parcel is 5 or more acres (and) the owner gives written consent to the assessor.”

However, the law doesn’t say that parcels may be combined this way to reduce property assessments.

Ruth Birtz, assessor for the town of Lincoln and president of the Maine Association of Assessing Officers, said the practice is still used across the state to ensure fair and equitable assessments.

Birtz noted that on the outskirts of Lincoln – about an hour north of Bangor, in Penobscot County – house lots must be at least 2 acres, but some people buy more land for greater privacy and other reasons. Under those circumstances, it would be unfair to assess a homeowner with 12 wooded acres of land the same as a subdivision with six house lots up for sale.

But undervaluing excess land gets risky where property values are impacted by proximity to waterfront and other features that influence market demand, Birtz said.

“It depends on location,” Birtz said. “You’re not going to get a standard application across the state. There are a lot of variables in property assessment. At assessing functions, we’ve debated this at length. The highest and best use changes, depending on the area. Lincoln is different than York.”

### **ILLINOIS - I Spent Years Reporting on Chicago’s Property Tax System. Here’s What Got Me Out of the Weeds.**

Behind all the technical terms and the statistics is a story about the simple concept of fairness.

Coefficient of dispersion, price-related differential, first-pass, second-pass, assessment level, effective tax rate ... I’d use these terms in meetings with my editors, and I could feel my own eyelids getting heavy.

For about 2 1/2 years now, I’ve been reporting on the Cook County property tax assessment system, uncovering inequities and explaining them to readers. At times, the work has been mind-numbing, with long stretches when I was lost in the weeds. But one thing was certain: Behind all the technical terms and the statistics was a story about the simple concept of fairness.

In many ways, the assessor’s office is a black box. Not even attorneys who have worked in the field for decades understand how the office derives values. And Cook County Assessor Joseph Berrios has refused to make that information public. My work, to some degree, involves poking holes in the box so we can shed light on how the office operates. My story this week on commercial and industrial assessments is the latest, following work I did on residential assessments for the Chicago Tribune.

In the early days of reporting these stories, I found Illinois Department of Revenue studies that suggested the property tax assessment system was deeply unfair. I wanted to determine if the evidence supported that assertion and proved the system was broken. As my reporting — and my work with colleague Sandhya Kambhampati — progressed and I learned more, I began to see how those with the least were paying more than they should while the wealthy paid less.

At a time when income inequality has grown to staggering proportions in our country, I came to see that the property tax system aggravated those disparities. Many of those who benefited were political heavyweights who also work as property tax lawyers.

How could I present this information in a way that would move readers and, perhaps, drive change? I knew the key was getting behind the numbers and finding the people who were harmed by the system. Their compelling stories fueled the narrative as we presented the nuts and bolts of this arcane system and our investigative findings about it.

I found people like Brenda Doyle, owner of Sweet Pea Academy day care, in the Auburn Gresham neighborhood on the South Side. She ran the day care with her husband, Larry, and daughter Jamilah. Sweet Pea is exactly the kind of small, family-owned business that should get a fair shake. Instead, its tax bill was far higher than it should have been, which made it hard for the family to stay afloat. The story about the Doyles’ business was similar to ones I discovered when reporting on residential assessments for the Chicago Tribune. For that project, I found a block in North Lawndale where nearly every property was

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overvalued. Many of the people I met grew up in their homes, having inherited them from their parents, and now are having trouble paying their property taxes because they were overvalued. People like Joan Clark, who struggled to pay the property tax bill on the home she grew up in because it was overvalued by 40 percent. She told me she was worried about losing her house.

These are the people who matter. They are why we worked so hard to shine a light on this issue.

### **ILLINOIS - Cook County Assessor Berrios Faces More Heat**

More scrutiny for embattled Cook County Assessor Joe Berrios.

A government watchdog group is calling for oversight of Berrios and the way his office assesses property values. This comes as Berrios faces a lawsuit and condemnation by many public officials in his own party after recent investigations have revealed problems with how properties are assessed.

On top of that, the Cook County inspector general says he will be weighing in on this process in the near future as well. Remember, Berrios had long ignored that office, saying it had no oversight over his office, but a state supreme court ruling said otherwise. Now the inspector general says he will have a statement on the assessment process. This comes as the Illinois Campaign for Political Reform calls on Cook County to establish an oversight board to watch over Berrios and how he assesses the million-plus parcels of property in Cook County to determine how much they pay in property tax.

A series by ProPublica and the Chicago Tribune has revealed a general pattern of undervaluing wealthy properties, meaning those buildings pay less, and overvaluing poorer properties, resulting in higher proportionate property taxes. The Illinois Campaign for Political Reform says the office lacks the basic transparency measures of other offices in other jurisdictions, and needs an independent panel minding the store.

“There should be an oversight panel created to look further into these issues, establish what best practices are across the nation and make specific tangible policy changes,” said ICPR Director Sarah Brune. “People want to know that they’re being treated fairly in this process. This is dollars and sense, this is their hard earned money.”

Berrios’ office responded Tuesday saying there is an independent review going on right now of how the assessment process is handled, that he is cooperating with that and the inspector general. The office also takes exception to the Tribune reporting, claiming it didn’t accurately analyze the numbers and that it wasn’t done by assessment professionals.

“If you look at the actual figures and records and (commercial) buildings involved, you’ll see that the assessments make complete sense,” said Tom Shaer, deputy assessor for communications. “And I have yet to hear anyone say, ‘Here’s what the figures should be on that building.’ The assessor is already committed to making whatever changes possible or recommended by the current study that the county has undertaken at the request of President (Toni) Preckwinkle.”

Berrios has also been fighting Freedom of Information requests to get at aspects of the method the office uses to calculate property assessments, since so many of them are vastly different than the value a property has when it is sold. And another aspect of that investigation is the fact that property owners, many big downtown office buildings, who retain law firms run by powerful Illinois politicians House Speaker Michael Madigan and Ald. Ed Burke often win big reductions in their property taxes when they challenge those numbers.

It’s caused some politicians running for office to call for a ban on public officials acting as tax appeal attorneys in their side jobs.

### **ILLINOIS - The Cook County Assessor's Office is only the first step**

Your article “Assessor's estimates defy logic, benefit lawyers” and Sunday’s accompanying editorial unfairly impugn the assessment appeal process, the tax bar, and property taxpayers themselves. The assessment process and valuation standards are defined by the state constitution, statutes and decisions of the courts. The laws exist so that all property taxpayers, whether

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rich or poor, have the opportunity to ensure that their properties are assessed correctly and that they pay only their fair share of property taxes.

It is naive to think that any assessor would have sufficient information to initially publish accurate assessments for 1.8 million parcels, particularly for the heterogeneous mix of commercial properties in Cook County. No sales ratio study can accurately gauge values for such a large sample that includes neighborhood stores and offices, strip centers, big boxes, malls, restaurants, hotels, nursing homes, bowling alleys, theaters, funeral homes and high rise offices.

It is only through the presentation of current data not otherwise available to the assessing officials that property owners are most likely to secure accurate valuations for their properties. A fair and efficient appeal process, in which taxpayers can provide competent, independent evidence of the value of their own individual properties, is essential to maximizing uniformity and accuracy. No taxpayer should be criticized for exercising his/her right to appeal. It is the role of property tax lawyers to present facts and law to the assessing officials to ensure our clients are assessed and taxed in accordance with the law.

The Tax Divide series and critical editorials ignore that the Assessor's Office is only the first step in determining assessments. Many appeals do not reach final resolution at this initial stage, even where some relief is granted. This has always been true, regardless of who has been the assessor. The law provides for progressive assessment review through a Cook County Board of Review, state Property Tax Appeal Board and the courts. Further corrections are frequently made at these higher levels.

As lawyers, it is our job to ethically and diligently advocate for our clients. At the end of the day, every case depends on the facts and law supporting the requested valuation.

Illinois Property Tax Lawyers Association

#### **ILLINOIS - Berrios sued for allegedly biased property tax assessments**

Cook County Assessor Joe Berrios is continuing to face allegations that his property tax assessment system is biased against low income and minority homeowners

The Brighton Park Neighborhood Council and the Logan Square Neighborhood Association filed a lawsuit on Thursday against Cook County Assessor Joe Berrios, alleging that his office "systematically and illegally" shifts residential property tax burdens to minority and low-income homeowners.

The lawsuit comes after months of allegations against the assessor for undervaluing homes in majority-white and majority high-income neighborhoods.

Homes in minority and low-income neighborhoods were allegedly overvalued to make up for the disparity.

"It is fundamentally unfair that families in this community are required to pay artificially inflated taxes for their homes and bear a disproportionate share of the tax burden in Cook County," Patrick Brosnan, of Brighton Park Neighborhood Council, said in a statement.

A joint series by the Chicago Tribune and ProPublica Illinois in June investigated that methodology and found it to be "riddled with errors." Berrios refuted the claims and said taxpayers could appeal.

In the suit, the two community groups say under Berrios, "Cook County's residential property tax scheme is neither accurate nor uniform — and therefore violates the Illinois Civil Rights Act, the Equal Protection Clauses of the Illinois and United States Constitutions, the Uniformity Clause of the Illinois Constitution, and the federal Fair Housing Act."

The groups are requesting the court to declare the assessment system unlawful, and to order Berrios' office to adopt and implement a fair, accurate and nondiscriminatory system. It also seeks the appointment of an independent monitor to oversee the process.

The assessor's office stands by its property assessments, but could not comment further due to the pending litigation.

Berrios' campaign manager Mario Lopez called the lawsuit "politically motivated."

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“Long before media attention turned to property assessment, the Berrios administration has been proactive in improving the system to make assessments fairer,” Lopez said in a statement. “Cook County and the assessor’s office hired Tyler Technologies to work on identifying improvements in the property assessment system at every level — a process that is still ongoing, as improving any 40-year-old system cannot be accomplished overnight.”

Democrat Fritz Kaegi, candidate for Cook County Assessor, chimed in on the matter, saying in a statement the suit “is yet another sign that Joe Berrios cannot be trusted to be our Assessor. The harmful effects are disproportionately felt in lower income neighborhoods and communities of color, and it is urgently necessary to fix this broken system.”

### **ARIZONA - New CRE group forms to push property tax reform**

In late August, a new not-for-profit commercial real estate trade association was established to reform commercial property taxes in Arizona, which are among the highest in the United States and a key impediment to high wage job creation. The name of the group is Commercial Real-estate Executives for Economic Development or “CREED.”

The group was organized to attract the largest property owners in as many key sectors as possible and therefore be the spearhead of a larger coalition to include numerous other trade associations.

Presently, the group includes on its board, six of the top eight largest industrial warehouse owners in the state; a rep for the larger grocery store owners; a large retailer; a large shopping center owner; and reps from two of the larger utilities – APS and CenturyLink. In total, the group represents a minimum of 70-million square feet under management and more than 5,000 business tenants, most of whom are small businesses.

The chair of the board is Fred Stiles of EJM Development who is a past chairman of NAIOP and presently on the Arizona Chamber of Commerce and Industry Board of Directors. Kevin McCarthy, the president of the Arizona Tax Research Association, is also an ex-officio member.

In a nutshell, the top advocacy priority is to lower the current property tax assessment ratio for most businesses from 18 to 15 percent and to also reduce or abolish the state equalization property tax rate.

Defensively, the group will strongly oppose any movement to impose a new statewide property tax unless such a tax were to treat businesses more equitably with other property taxpayers by eliminating a split roll and also curbing future bond/override elections that generate disparities among local taxing jurisdictions.

Finally, CREED will vigorously examine and potentially oppose efforts to further “swiss cheese” the property tax code by creating further fairness disparities with narrow property tax exemptions and unjustified abatements. CREED also will look for vehicles to patch the holes that already exist to treat all taxpayers more equitably.

Below is a more specific synopsis of CREED’s public policy goals at the State Capitol starting in January.

Support and retain property tax reform to make our state more economically competitive

Support any measure to further cut the property tax burden on commercial property, especially if the measure is applied across all commercial properties such as lowering the assessment ratio from 18 to 15 percent or elimination/suspension of the state equalization rate.

Oppose mandated commercial real estate cost increases

Fight any measure that increases existing property tax costs to the commercial real estate industry.

Also, of concern is the imposition of a new statewide property tax especially if it does not include a reduction in the assessment ratio or reductions in inequitable K-12 secondary taxes.

Oppose measures to shift valuation increases to commercial properties, to further rifle-shot a 5-percent assessment ratio to selected taxpayers, or to enact property tax increment financing (TIF) that all favor some taxpayers over others while shifting property taxes to the rest of the commercial real estate community.

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Support property tax simplification and transparency

Support any measure to bolster “Truth in Taxation,” which keeps public pressure on all taxing units to keep their levies in line by publicly disclosing the specific burden of each entity upon all taxpayers.

Support regulatory reform measures to streamline and create more accountability for bonding election processes and to further simplify the valuation or property tax appeal processes for the county assessors.

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