



ILLINOIS PROPERTY TAX

Robert M. Sarnoff

§ 14-000. INTRODUCTION

For all practical purposes, Illinois has two property tax systems: one for Cook County, which includes the City of Chicago, and another for the remainder of the State. Governmental bodies, legal procedures and legal remedies differ between Cook County and the remainder of Illinois. Therefore, topics in this chapter are divided between Cook County and counties outside of Cook County.

§ 14-100. DEFINITIONS AND CITATIONS

§ 14-110. Definitions and Terms used in Chapter

§ 14-111. County Assessor. In Cook County, which includes the City of Chicago, the county assessor is the primary elected assessment official. 35 ILCS 200/3-50. St. Clair County also has an elected county assessor.

§ 14-112. Board of Review. Effective December 7, 1998, the two member board of appeals was replaced with an elected three member board of review. Cook County was divided into three districts of approximately equal population. One member of the board of review is elected from each of the three districts, and the members serve four-year staggered terms, beginning in the year 2002. The geographic limits of the districts are generally as follows:

First District: Twenty-seven of the thirty suburban townships and three wards of the City of Chicago.

Second District: The City of Chicago north of 22nd Avenue and west to the city limits, and certain near west and near north suburbs.

Third District: The City of Chicago south of 22nd Avenue and west to the city limits, portions of the west and southwest suburbs, and the south suburbs.

§ 14-113. Township Assessor. Counties outside of Cook County are divided into townships with elected township assessors. 35 ILCS 200/2-45.

§ 14-114. Supervisor of Assessments. Each county

outside of Cook County has either an elected or an appointed supervisor of assessments. The supervisor of assessments is the primary assessment official in these counties, and is responsible for reviewing the work of the township assessors.

§ 14-115. Board of Review. Each county outside of Cook County has a three member board of review which reviews assessments. 35 ILCS 200/6-5.

§ 14-116. Property Tax Appeal Board. The Property Tax Appeal Board (PTAB) consists of five members, appointed by the governor, who hear assessment appeals from decisions of the boards of review. 35 ILCS 200/7- 5. The Property Tax Appeal Board is now hearing appeals from decisions rendered by the Cook County Board of Appeals, effective for *tax year 1996* with respect to *residential property of six units or less*, and effective for *tax year 1997* (and subsequent years) with respect to *all other property*. 35 ILCS 200/16-160 (Public Act 89-126 and Public Act 89-154).

§ 14-117. Department of Revenue. The Illinois Department of Revenue is charged with the duty of assessing all property not assessed by the local assessing authority. The Department is also responsible for the supervision of the assessment process in Illinois. As such, the Department advises and assists local assessment officials; prescribes rules and regulations that are binding on local assessment officials and prescribes or approves the form of complaints or notices used by local assessment officials. The Department also has the duty to equalize the valuation and assessment of property between counties in Illinois. 35 ILCS 200/8-5(6). Finally, all exemption certificates issued by boards of review are subject to Department approval. 35 ILCS 200/16-130.

§ 14-120. Citations to Statutes, Regulations & Cases Cited

§ 14-121. Illinois Compiled Statutes 2000 (ILCS)

§ 14-122. Illinois Reports (Ill.)

§ 14-123. Illinois Appellate Reports (Ill. App.)

§ 14-124. Cook County Classification Ordinance

§ 14-125. Official Rules of the Cook County Board of Review (BOR Rules)

§ 14-126. Official Rules of the Illinois Property Tax Appeal Board (PTAB Rules)

§ 14-200. CLASSIFICATION & VALUATION OF PROPERTY

§ 14-210. Classification of Property [& Subclasses]

Real property located in Cook County, which includes the City of Chicago, is assessed under a different assessment system than that applied throughout the rest of the state. Therefore, the discussion of property taxation herein will be divided between Cook County and the remainder of Illinois.

§ 14-211. Real Property - Cook County

§ The current Cook County Real Property Assessment Classification Ordinance divides real estate into eleven classes of property:

Class 1: Unimproved real estate, which is assessed at 22% of fair cash value.

Class 2: Real estate used as a farm or real estate used for residential purposes when improved with a house, an apartment building of not more than six living units, residential condominium, residential cooperative, or a government-subsidized housing project, if required by statute to be assessed in the lowest assessment category.

Real estate improved with a single room occupancy building, provided (1) that at least one-third of the single room occupancy units area leased at no more than 80 (eighty) per cent of the current "Fair Market Rent Schedule for Existing Housing for Single Room Occupancy units as set by the United States Department of Housing and Urban Development" (hereinafter "FMR schedule"); (2) that no single room occupancy units are leased at rents in excess of 100 (one hundred) per cent of the current FMR schedule; (3) that the overall maximum average rent per unit for all single room occupancy units in the building shall not exceed 90 (ninety) per cent of the current FMR schedule; and (4) that the subject property is in substantial compliance with all local building, safety and health codes and requirements. In the event that the owner fails to comply with these requirements, the Class 2 classification shall be revoked.

A new minor classification within Class 2 was established in tax year 2000 for two-story through four-story buildings containing small businesses and

apartments. To qualify for a change in classification from Class 3-18, 3-19, 3-20 and 3-21 (previously assessed at 33% of market value) to Class 2-18, 2-19, 2-20 and 2-21 (assessed at 16% of market value) the property must contain: a) 6 units or less (aggregate of commercial and residential units); and b) no more than 20,000 square feet of building area.

Property in this class is assessed at 16% of fair cash value.

Class 3: All improved real estate used for residential purposes which is not included in Class 2 or in Class 9. Property in this class is assessed at 33% of fair cash value.

Class 4: Real estate owned and used by a not-for-profit corporation in furtherance of the purposes set forth in its charter, unless used for residential purposes. If such real estate is used for residential purposes, it shall be classified in the appropriate residential class. Property in this class is assessed at 30% of fair cash value.

Class 5a: All real estate not included in Class 1, Class 2, Class 3, Class 4, Class 5b, Class 6b, Class C, Class 7a, Class 7b, Class 8, Class 9 or Class L of this section. Property in this class is assessed at 38% of fair cash value. This class generally includes all commercial property.

Class 5b: All real estate used for industrial purposes and not included in any other class. Property in this class is assessed at 36% of fair cash value.

Class 6b: Real estate used primarily for industrial purposes, consisting of all newly constructed buildings or other structures, including the land upon which they are situated; or abandoned property (buildings which have been vacant and unused for at least 24 continuous months), including the land upon which such property is situated; or all buildings and other structures which are substantially rehabilitated to the extent such rehabilitation had added to their value, including qualified land related to the rehabilitation. Land qualifies when the rehabilitation adds vertical or horizontal square footage to the improvements. The amount of land eligible for the incentive shall be in such proportion as the square footage added by the rehabilitation bears to the total square footage of the improvements on the parcel. To receive this classification, the taxpayer must apply to the Cook County Assessor for certification. The taxpayer must also secure a resolution or ordinance from the municipality in which the real estate is located (or the Cook County Board of Commissioners, if the property is located in an unincorporated area), determining that the Class 6b incentive is necessary for development to occur on the subject real estate and that the mu-



ILLINOIS PROPERTY TAX

municipality (or Cook County Board) supports and consents to the Class 6b application. If the municipality (or Cook County Board) finds that special circumstances justify finding that the subject real estate is “abandoned” for the purposes of the Class 6b incentive, *even though the property has been vacant and unused for less than 24 consecutive months*, that finding, and the specification of the circumstances, must be included in the resolution or ordinance. Additionally, if the resolution or ordinance is issued by a municipality, a resolution issued by the Cook County Board, validating the shortened period of abandonment, must be included with the Class 6b eligibility application.

This class of property is assessed at 16% of fair cash value for the first ten years, and for any subsequent ten year renewal periods. If the incentive is not renewed, the property is assessed at 23% of fair cash value in year 11 and 30% of fair cash value in year 12.

To receive this special assessment the taxpayer must have a municipal resolution in support of the application and must apply to the Cook County Assessor for certification before construction of a new building or the substantial rehabilitation or reoccupancy of existing buildings. This special classification may be renewed, for additional ten year renewal periods, during the last year in which the real estate is entitled to a 16% level of assessment (or through the last year of the incentive period for real estate which is currently classified as Class 6b, but which is assessed at a level of assessment of 23% or 30% of fair cash value). The number of renewal periods is unlimited, provided that the taxpayer continues to qualify for the Class 6b classification, and complies with the renewal procedures. As prerequisites to renewal, the taxpayer must provide the Assessor’s Office with notification of the intent to request renewal; the municipality or County Board must adopt a resolution or ordinance expressly determining that the industrial use of the property is necessary and beneficial to the local economy and that it therefore supports and consents to renewal of the Class 6b classification; and the taxpayer must file the resolution and a completed renewal application with the Assessor’s Office before the expiration of the 16% level of assessment period (or the expiration of the incentive period for those properties which are currently classified as Class 6b).

Class 7a: Real estate used primarily for commercial purposes, comprising a qualified commercial development project, located in an “area in need of commercial development,” where the total development costs, exclusive of land, do not exceed \$2 million, consisting of all newly constructed buildings or other structures, including the land upon which they are situated; or abandoned property (buildings which have

been vacant and unused for at least 24 continuous months), including the land upon which such property is situated; or all buildings and other structures which are substantially rehabilitated to the extent such rehabilitation has added to their value, including qualified land related to the rehabilitation. Land qualifies when the rehabilitation adds vertical or horizontal square footage to the improvements. The amount of land eligible for this incentive shall be in such proportion as the square footage added by the rehabilitation bears to the total square footage of the improvements on the parcel. To receive this classification, a municipal resolution indicating that all Class 7 requirements have been met must accompany the application to the Assessor; and a public hearing must then be held by the Assessor. If the municipality or the Board of Commissioners determines that special circumstances justify finding that the property is “abandoned” for purposes of Class 7a, even though it has been vacant and unused for *less than 24* consecutive months, that finding must be included in the resolution or ordinance in support of the Class 7a classification. If such a finding is made by a municipality, a second resolution or ordinance, approving the shortened period of “abandonment,” issued by the Cook County Board of Commissioners must also be filed with the Class 7a eligibility application. Property in this class is assessed at 16% of fair cash value for the first ten years, 23% of fair cash value in year 11 and 30% of fair cash value in year 12. To receive this special assessment, the taxpayer must apply to the Cook County Assessor for certification.

Class 7b: Real estate used primarily for commercial purposes, comprising a qualified commercial development project, located in an “area in need of commercial development,” where total development costs, exclusive of land, exceed \$2 million. This classification shall continue for a period of twelve years from the date of new construction (including demolition, if any) or substantial rehabilitation was completed and initially assessed, or in the case of abandoned property, from the date of substantial reoccupancy. To receive this classification, a municipal resolution indicating that all Class 7 requirements have been met must accompany the application to the Assessor; the application must be reviewed by the Cook County Economic Development Advisory Committee; and a public hearing must then be held by the Assessor. Property in this class is assessed at 16% of fair cash value for the first ten years, 23% of fair cash value in year 11 and 30% of fair cash value in year 12. To receive this special assessment, the taxpayer must apply to the Cook County Assessor for certification.

Class 8: Real estate, including buildings and the land upon which they are located, used primarily for industrial and/or commercial purposes, located in an area designated as in need of substantial revitaliza-

tion, *or* must be in an Enterprise Community as proposed and approved by the Cook County Board of Commissioners or the Chicago City Council *or* must be included in one of the townships targeted by the South Suburban Tax Reactivation Program. To qualify for Class 8 treatment, property must consist of newly constructed or rehabilitated buildings or other structures, or buildings or other structures which are re-occupied after two or more years of abandonment. To receive this special assessment, the municipality (or the Cook County Board of Commissioners, if the property is located in an unincorporated area) must apply to the Assessor for certification of the area as “in need of substantial revitalization.” Once this certification is granted, individual property owners and developers within the area may apply to the Assessor for Class 8 classification.

However, under the newly created South Suburban Tax Reactivation Pilot Program, properties in Bloom, Bremen, Calumet, Rich and Thornton Townships, which are purchased for commercial or industrial use through the “No- Cash Bid” process for tax delinquent properties, are automatically eligible for Class 8 classification.

Commercial property in this class is assessed at 16% of fair cash value for the first ten years, 23% of market value in year 11 and 30% of market value in year 12.

Industrial property in this class is assessed at 16% of fair cash value for the first ten years. The Class 8 classification on industrial properties may be renewed, for additional ten year renewal periods, during the last year in which the real estate is entitled to a 16% level of assessment (or through the last year of the incentive period for real estate which is currently classified as Class 8, but which is assessed at a level of assessment of 23% or 30% of fair cash value). The number of renewal periods is unlimited, provided that the taxpayer continues to qualify for the Class 8 classification, and complies with the renewal procedures. As prerequisites to renewal, the taxpayer must provide the Assessor’s Office with notification of the intent to request renewal; the municipality or County Board must adopt a resolution or ordinance expressly determining that the industrial use of the property is necessary and beneficial to the local economy and that it therefore supports and consents to renewal of the Class 8 classification; and the taxpayer must file the resolution and a completed renewal application with the Assessor’s Office before the expiration of the 16% level of assessment period (or the expiration of the incentive period for those properties which are currently classified as Class 8. At the end of the last renewal period, the incentive will be phased out at levels of assessment of 23% during the eleventh year of the last renewal period, and 30% during the last

year of the incentive period.

Class 9: All real estate otherwise entitled to class 3 classification under the ordinance, provided that such real estate, consisting of land and existing buildings and structures, (1) is multifamily residential real estate, (2) has undergone major rehabilitation, (3) is located in a targeted area, (4) has at least 50% of the dwelling units leased at rents affordable to low or moderate income persons or households, and (5) is in substantial compliance with all applicable local building, safety and health requirements and codes. Property in this class is assessed at 16% of fair cash value for an initial ten year period, and is renewable for *one* additional ten year period, upon application to the Assessor within the period from 18 months to 12 months prior to expiration of the Class 9 classification period. Renewal of the Class 9 classification may only be granted upon determination by the Assessor that the new or rehabilitated building remains in compliance with the affordable rent requirements and in substantial compliance with all applicable local building, safety and health requirements and codes.

Class “C”: Real estate which has undergone environmental testing and remediation of contamination, in preparation for use for commercial or industrial purposes, and which has received a “No Further Remediation Letter” from the Site Remediation Program of the Illinois Environmental Protection Agency (IEPA) is eligible for a reduced assessment. Eligible applicants for Class C classification must successfully demonstrate that they were not responsible for the environmental contamination and have not previously owned or operated the site (either directly or indirectly—including having partnership interests in, or family or business relationships with, prior owners or operators, etc.). Application for the Class C classification must be made within one year of receipt of the “No Further Remediation Letter,” confirming achievement of the remediation objectives. The application must be accompanied by an ordinance or resolution expressly stating that the municipality (or the Cook County Board of Commissioners, if the property is located in an unincorporated area) has determined that the Class C incentive is necessary for development of the subject real estate to occur, and that the municipality (or County Board) supports and consents to the Class C application. If the application for Class C classification encompasses less than all of the contiguous property upon which remediation has been completed, the one year limitation will be waived for any subsequent separate application for Class C classification for the remainder of the remediated property, provided that application is made within seven years. Further, site remediation costs must total at least \$100,000 or at least 25 percent of the property’s market value (as indicated by the Assessor’s property record card in the year prior to the remediation),



whichever is less.

Class C (industrial) property is assessed at 16% of fair cash value for the first ten years, and for any subsequent ten year renewal periods. If the incentive is not renewed, Class C (industrial) property is assessed at 23% of fair cash value in year 11 and 30% of fair cash value in year 12. Class C (commercial) property is assessed at 16% of fair cash value for the first ten years, 23% of fair cash value in year 11 and 30% of fair cash value in year 12.

The Class C classification on industrial properties may be renewed, for additional ten year renewal periods, during the last year in which the real estate is entitled to a 16% level of assessment (or through the last year of the incentive period for real estate which is currently classified as Class C, but which is assessed at a level of assessment of 23% or 30% of fair cash value). The number of renewal periods is unlimited, provided that the taxpayer continues to qualify for the Class C classification, and complies with the renewal procedures. As prerequisites to renewal, the taxpayer must provide the Assessor's Office with notification of the intent to request renewal; the municipality or County Board must adopt a resolution or ordinance expressly determining that the industrial use of the property is necessary and beneficial to the local economy and that it therefore supports and consents to renewal of the Class C classification; and the taxpayer must file the resolution and a completed renewal application with the Assessor's Office before the expiration of the 16% level of assessment period (or the expiration of the incentive period for those properties which are currently classified as Class C.

Class "L": Real estate used for commercial or industrial purposes that are designated as "landmarks." Owners must invest at least 50 percent of the buildings full market value in the rehabilitation of the building; and the property must be located in an area designated by the state as a "Certified Local Government." To qualify, the owner must obtain a local government ordinance or resolution finding that the incentive is necessary for the rehabilitation; that it supports granting the incentive; and that it complies with standards of the U.S. Department of Interior for landmark property. In addition, the owner must file the local resolution and eligibility application with the Assessor within one year prior to beginning rehabilitation; and after rehabilitation, the owner must submit a copy of the determination by the local preservation committee that the rehabilitation has met its standards. Property in this class is assessed at 16% of fair cash value for the first eight years, 23% of fair cash value in year 9 and 30% of fair cash value in year 10.

§ 14-212. Real Property - Outside Cook County

Counties with more than 200,000 inhabitants are authorized to classify property for assessment purposes. 35 ILCS 200/9-145. However, since only Cook County has a classification ordinance, all property outside of Cook County (except for certain statutory exceptions such as farm land, airports, open space, pollution control facilities and government owned property) is assessed, subject to equalization, at one-third of its fair cash value. 35 ILCS 200/9-145.

Parcels that include both farmland and residential property are assessable as farmland (a more favorable treatment than assessment as residential property), pursuant to a PTAB decision, affirmed by the Third District Appellate Court, in a property re-classification case. The PTAB found that the property at issue: (1) had been previously assessed as farmland; (2) had been used solely for the purpose of growing crops for many years; (3) had not changed in use since the last assessment; and (4) was surrounded by land that was currently being farmed. The Appellate Court refused to give any deference to a DOR "advisory" guideline that "the primary use of a parcel containing conventional farm and residential uses is presumptively residential unless the farmed portion is larger than the residential portion and is five acres or more." *Kankakee County Board Of Review v. Illinois Property Tax Appeal Board, et al.*, 305 Ill. App. 3d 799; 715 N.E.2d 274, 275 n.1, 239 Ill. Dec. 829 (3rd Dist. 1999), *cert. denied*, 185 Ill.2d 629 (1999).

§ 14-213. Personal and Other Property.

The taxation of personal property, including business property, inventory, and intangibles was abolished by the Illinois Constitution (Ill. Const. 1970, art. IX, sec. 5. (c)) effective on January 1, 1979. This constitutional mandate was initially implemented by the Replacement Tax Act (Section 18.1 of the Revenue Act of 1939, recodified as 35 ILCS 200/24-5) In 1982 the act was amended, retroactive to January 1, 1979, to bar property of "like kind" from being reclassified from personal to real (and real to personal) property for assessment purposes.

Under the Replacement Tax Act, whether a particular piece of machinery or equipment is real or personal property depends on how it was lawfully assessed prior to January 1, 1979. When a personal property tax return that includes machinery and equipment was accepted by the assessor prior to January 1, 1979, it has been held that, absent fraud, the machinery and equipment cannot subsequently be reclassified as real estate. *People ex rel. Bosworth v. Lowen*, 115 Ill. App.3d 855, 451 N.E.2d 269, 71 Ill. Dec. 554 (3d Dist. 1983). This settles the classification of such property, as well as any "like kind" prop-

erty that may replace it, as personalty. Since classifications of property must be uniform within a county (*Central Illinois Light Co. v. Johnson*, 84 Ill.2d 275, 418 N.E.2d 696, 49 Ill. Dec. 676 (1981)), expansion of existing facilities or establishment of new facilities are also arguably protected from reclassification, if similar property was classified as personal property prior to January 1, 1979. Consequently, there may be variations between counties in the classification of particular items as real or personal property.

A recent decision highlights both the importance of establishing the assessment practice prior to January 1, 1979, as well as the importance of the constitutionally required uniformity of assessment of property within a county. In *Commonwealth Edison v. Ogle County, et al.*, Docket Nos. 89-1163-I-3 through 92-1069-I-3 (1996), the Property Tax Appeal Board ruled that a significant portion of the machinery and equipment in a nuclear power plant is personal property based upon the testimony of the former supervisor of assessments. In that case, the former county supervisor of assessments (who held office from 1973 to 1984) testified as to his practice of treating a significant proportion of the machinery and equipment located at the subject property (both individually and under various percentage agreements with the taxpayer) as personal property. The PTAB also ruled that steam generators, which had been classified as real property prior to January 1, 1979, had to be classified as personal property, based on the uniform treatment of other, similar, property in the county. (Art. IX, Sec. 4 of the Illinois Constitution) This decision was affirmed on appeal by an intermediate appellate court. The case was granted certiorari by the Illinois Supreme Court, but was settled before a decision was rendered. *Oregon Community School District No. 220, et al. v. Property Tax Appeal Board, et al.*, 285 Ill. App.3d 170; 674 N.E.2d 129, leave to appeal granted, 172 Ill.2d 554 (Docket No. 82607) (2nd Dist., 1997).

The Property Tax Appeal Board, in a decision which also rejected the “integrated plant” doctrine, interpreted the “like kind” exemption to include new plants and equipment, if similar property in the county was treated as personal property prior to January 1, 1979. (*Diamond Star Motors v. Board of Review of McLean County*, Docket Nos. 88-2525-I-3 & 89-4200-I-3).

Additionally, in a case upheld by the Illinois Appellate Court, the Property Tax Appeal Board held that new machinery and equipment that produces the same products, performs the same functions, is similarly attached and is of similar portability to older machinery and equipment, is of “like kind” to the older machinery and equipment and should be treated the same for assessment purposes. For example, if the older machinery and equipment was treated as personal

property prior to January 1, 1979, the new “like kind” machinery and equipment should also be treated as personal property. Therefore, pursuant to statute, the assessor and supervisor of assessments must continue to treat the “like kind” property as personal property and cannot reclassify and re-assess the property as real property. *Northwestern Steel & Wire Co. v. Whiteside County Board of Review*, PTAB Docket Nos. 88-1238-I-3 thru 88-1304-I-3; 89-1536-I-3 thru 89-1611-I-3; 90-0362-I-3, (1993). Affirmed in *Northwestern Steel & Wire Co. v. Whiteside County Board of Review*, 273 Ill. App.3d 182, 658 N.E.2d 481 (3rd Dist., 1995).

§ 14-220. Valuation of Property

§ 14-221. Fair Cash Value

Real property is assessed at a percentage of its “fair cash value.” Fair cash value has been defined by the Illinois Supreme Court as “what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell, but not compelled to do so, and the buyer is ready, willing and able to buy, but not forced to do so.” *Springfield Marine Bank v. Property Tax Appeal Board*, 44 Ill.2d 428, 256 N.E.2d 334, 336 (1970).

§ 14-222. Cook County

In Cook County, property is assessed at a percentage of its fair cash value according to its classification (see 14-211, above).

§ 14-223. Outside Cook County

Since only Cook County has a classification ordinance, all property outside of Cook County is assessed at one-third its fair cash value. 35 ILCS 200/9-145. There are, however, special provisions for farms, solar energy systems, airports, open spaces and pollution control facilities.

§ 14-224. Valuation Approaches

§ 14-224.01. Market Approach

Since “fair cash value” is the basis of property assessment in Illinois, the courts have held that the market approach can be disregarded only when there is no actual or potential market for the property in question. It is, in most cases, the preferred method of valuing property, and even distant and remote sales must be considered if they are shown to be comparable to the subject property. *Willow Hill Grain, Inc. v. Property Tax Appeal Board*, 187 Ill. App.3d 9, 542 N.E.2d 1287 (5th Dist. 1989). *Chrysler Corp. v. Property Tax Appeal Board*, 69 Ill. App.3d 207, 387 N.E.2d 351 (1979).

In an opinion that seemingly conflicts with the statutory requirement that parcels be valued separately for assessment purposes, the Appellate Court for the Second District reversed the PTAB and held that it was appropriate to add the real estate value of separately assessed parking lots to the value of the properties "using" said parking lots, *i.e.*, the stores in a shopping mall, since the right to use said parking lots "enhanced" the market value of the stores. *The County Of Du Page, et al. v. The Property Tax Appeal Board*, 303 Ill. App. 3d 538; 708 N.E.2d 525; (cert.) den., 1999 Ill. LEXIS 1137(1999).

The PTAB initially addressed the issue of whether contaminated property has any fair market value, or whether it should be assessed at zero market value. *Techalloy Company, Inc., v. The Property Tax Appeal Board*, 291 Ill. App. 3d 86; 683 N.E.2d 206; 1997 Ill. App. LEXIS 534; 225 Ill. Dec. 262 (2nd Dist., 1997). In this case, the PTAB did not reject the possibility that the projected cost of environmental clean-up could reduce the assessed value of real property to nothing. However, the taxpayer did not present the hydrologist's report, other documentary evidence regarding the contamination and/or the cost to cure, a copy of the Consent Order with the United States Environmental Protection Agency, etc. Accordingly, the PTAB ruled, and was upheld on appeal, that the contested assessment was supported by the weight of the evidence, and no deduction should be applied for environmental contamination. *Techalloy Company, Inc., v. The Property Tax Appeal Board*, 291 Ill. App. 3d 86; 683 N.E.2d 206; 1997 Ill. App. LEXIS 534; 225 Ill. Dec. 262 (2nd Dist., 1997).

§ 14-224.02. Cost Approach

While courts recognize the validity of the cost approach in some instances, they have been reluctant to place reliance on it since it is not the market value standard enunciated by the Illinois Supreme Court in *Springfield Marine Bank v. Property Tax Appeal Board*, 44 Ill.2d 428, 256 N.E.2d 334, 336 (1970). There is authority that the cost approach should be applied only if there are no comparable sales. *Chrysler Corp. v. Property Tax Appeal Board*, 69 Ill. App.3d 207, 387 N.E.2d 351 (1979). *Willow Hill Grain, Inc. v. Property Tax Appeal Board*, 187 Ill. App.3d 9, 542 N.E.2d 1287 (5th Dist. 1989).

Where an assessment is based solely on reproduction cost less depreciation, the assessor has a duty to explain his cost methodology and to demonstrate a relationship between his cost approach and the property's fair cash value. *People ex rel. Rhodes v. Turk*, 391 Ill. 424, 63 N.E.2d 513 (1945). Depreciation includes functional and economic obsolescence as well as physical depreciation.

§ 14-224.03. Income Approach

Illinois courts recognize the income approach to valuation of rental property. *People v. Robinson*, 406 Ill. 280, 94 N.E.2d 151 (1950). The Illinois Supreme Court, in *State v. Illinois Central R.R.*, 27 Ill. 64 (1861), recognized that a purchaser of income-producing property will most likely consider the property's income in determining value: "...a just opinion of real value would be the inquiry, what would prudent men give for the property, as a permanent investment, with a view to present and future income?" (*id.*, at p. 70). However, actual lease terms may be misleading as to a property's true rental value. Therefore, it is the property's capacity for earning income, and not its actual rent, that must be considered. *Springfield Marine Bank v. Property Tax Appeal Board*, 44 Ill.2d 428, 256 N.E.2d 334 (1970).

The courts have held that income data must be considered by the assessor in valuation of property when the data is made available or is readily ascertainable. *People ex rel. Wangelin v. St. Louis Bridge Co.*, 357 Ill. 245, 191 N.E. 300 (1934).

§ 14-300. ASSESSMENT PROCEDURE BY LOCAL ASSESSING AGENCY

§ 14-310. Assessment of Property

§ 14-311. Notice to Taxpayer

§ 14-311.01. Cook County

Cook County is divided into 38 townships which are assessed on a triennial basis, as follows:

The City of Chicago townships were last reassessed in 2000 and will again be reassessed in 2003 and every three years thereafter.

Townships in the north and northwest suburbs were last reassessed in 2001, and will again be reassessed in 2004 and every three years thereafter.

Townships in the south and southwest suburbs were last reassessed in 1999 and will again be reassessed in 2002 and every three years thereafter.

Triennial assessments in Cook County must be published. 35 ILCS 200/12-20. Additionally, personal notice of triennial assessments is usually given to property owners. However, such personal notice is not required. *People ex rel. Nelson v. Jenkins*, 347 Ill. 278, 179 N.E. 854 (1932). A taxpayer must be given notice of non-triennial assessment increases unless the change is due to structural improvements made to the

property. 35 ILCS 200/12-55; *People ex rel. Nelson v. Jenkins*, 347 Ill. 278, 179 N.E. 854 (1932). A recent amendment requires that a taxpayer receive a mailed notice for any changes made by the Board of Review. 35 ILCS 200/12-50 (as amended by Public Acts 89-126 and 89-671).

Beginning with assessment year 1997, Public Act 90-4 imposes upon the Cook County Assessor the duty to maintain his records and make them available to the public. Specifically, new section 35 ILCS 200/12-55 requires that, within 30 days of mailing general assessment notices for all properties other than single-family residences, the assessor must file with the Board of Review and make available for public inspection, a list of the parcels of property to which notices were mailed showing the following for each parcel: the permanent index number, township, classification, the previous year's final total assessment, the current year's proposed assessment, and the name of the person notified. Such records must be maintained (by the Board) for ten years. 35 ILCS 200/12-55).

In addition, the Act requires that the assessor's property record cards be updated to show "the elements (or basis) of valuation and computations" for each assessment, including "the elements (shown by percentages or otherwise) that were taken into consideration as enhancing or detracting" from value. (35 ILCS 200/16-8(a)) To enforce compliance the statute states that, upon taxpayer complaint, any increase in assessment shall be ruled invalid should the assessor provide "none" of the elements or bases of the valuation. 35 ILCS 200/16-8(a).

If the assessor desires to increase a taxpayer's property valuation on his own initiative, he is required to provide the taxpayer with personal notice of the proposed revision. 35 ILCS 200/12-55. (To ensure that said notice is received, said statute now also requires that when a notice is sent to a mortgagee that said mortgagee must forward a copy to each mortgagor.) Furthermore, the taxpayer must be afforded an opportunity to be heard before the assessment is verified. The assessor must publish a schedule of dates on which he will consider such revisions in the same manner as provided for revision of assessments on complaint of the taxpayer. 35 ILCS 200/14-35.

Finally, when giving notice of an increase in an assessment, the assessor is required to provide the reason for the increase and, should the taxpayer file a complaint, the reason for any decision rendered by the assessor. 35 ILCS 200/16-8(b).

§ 14-311.02. Outside Cook County

Outside of Cook County, in addition to publication of

quadrennial assessments, the township assessor, county assessor, or supervisor of assessments, as the case may be, is required to notify by mail any taxpayer whose real property assessment has "been changed since the last preceding assessment." 35 ILCS 200/12-30. This includes non-quadrennial assessments. Moreover, if an assessment is increased or decreased by final board of review action, including equalization by the board of review, then personal notice is required. However, notice is not required where changes are due to county equalization factors imposed by the Department of Revenue or equalization of township assessments by a county supervisor of assessments. 35 ILCS 200/12-30. Personal notice is in addition to, and not in lieu of, publication. *Andrews v. Foxworthy*, 71 Ill.2d 13, 373 N.E.2d 1332 (1978).

Personal notice must include the previous and current year's assessed values, a brief explanation of the relationship between the assessment and the tax bill, and must set forth the procedures and time limits for appealing assessments. The notice must state that the assessment of real property is required by law to be one-third of the value of the property. 35 ILCS 200/12-30.

§ 14-311.03. Failure of Notice

When an assessment is levied without notice and an opportunity to be heard, it is not necessary for the taxpayer to show that a resulting increase is excessive or that his property is overvalued. Such an increase is void even if it is a fair valuation of the property. *Huling v. Ehrich*, 183 Ill. 315, 55 N.E. 636 (1899). However, an appearance by the taxpayer before the board of review or the county assessor, without service of proper notice, may constitute a waiver of notice. *People ex rel. Smith v. Fleming*, 355 Ill. 91, 188 N.E. 818 (1909).

§ 14-312. Request for Hearing/Conference

§ 14-312.01. Cook County

A taxpayer may file a complaint with the Cook County Assessor before the assessor completes and verifies the assessment books. After filing a valuation complaint, the taxpayer is entitled to a hearing. 35 ILCS 200/9-85. The assessor is required to publish, at least one week before the hearings in a newspaper of general circulation, a schedule of the dates he will hear complaints after the assessment books have been completed. The time within which the taxpayer may file a complaint must be included in the publication. 35 ILCS 200/14-35.

§ 14-312.02. Outside Cook County

Outside of Cook County there is no formal procedure for taxpayer complaints at the assessor level. However, it is entirely appropriate to raise assessment issues with the township assessor and/or the supervisor of assessments. Once the supervisor of assessments, or county assessor, as the case may be, certifies the assessment books, the taxpayer may then file a complaint with the county board of review. (See 14-500, below).

§ 14-320. Hearing Procedure at Local Level

§ 14-321. Cook County

In Cook County, the assessor's office issues bulletins for each class of property, describing the data that should be submitted with a taxpayer's complaint. For tax year 1998, and future years, the assessor's office requires that certain worksheets be filed along with supporting documentation in connection with complaints filed on behalf of commercial, industrial and apartment properties. Moreover, if the subject property has been sold within the past three years, a separate worksheet, discussing the terms of the sale, must be filed. For most commercial and industrial property, an appraisal may be submitted. Additionally, if the property was sold in the last five years, evidence of purchase or other transfer may be presented. If the property is rental property, income and expense statements or tax returns may be submitted; and, where appropriate, a current rent roll, showing the names of tenants, the square footage rented, terms of the leases, and tax and common area charges may also be submitted. Other relevant data, such as vacancy affidavits, may also be submitted.

Usually, complaints before the assessor are processed without a hearing. When a hearing before the assessor is granted, there is no formal procedure. Once a decision is rendered, the taxpayer may request a re-review by the assessor before appealing to the Board of Review.

§ 14-322. Outside Cook County

Outside of Cook County, there are no uniform procedures to raise issues with an assessor. Since specific practices will vary from township to township, and county to county, it is advisable to contact county or township officials to determine local practice.

§ 14-400. ASSESSMENT PRACTICE BY TAXPAYERS

§ 14-410 . The Property Tax Case Summarized

The activities listed below are often helpful when contesting an assessment.

§ 14-411. Record Cards for Taxpayer's Property

The taxpayer should first examine the property record cards that describe its property for any inaccuracies in the descriptive information and errors in determining the assessed value. Generally, the record card for a particular property contains a description of the property (*e.g.*, it typically contains information about the number and type of rooms, plumbing, heating, interior finish and other construction related information about a building) and the assessed value, which usually is based on the cost approach to value. Assessors maintain such record cards for each property subject to tax.

§ 14-412. Record Cards for Similar Properties

The taxpayer may also review record cards for other properties that are similar to the taxpayer's property. Assessments in Illinois must be uniform. Therefore, a review of record cards for other, similar properties may reveal that the standards or methods of valuation employed by the assessor in valuing the taxpayer's property differ from those used to value other, similar, property.

Property record cards for the subject and similar properties are public records and can be examined at the county assessor's office or, outside Cook County, at the township assessor's office.

§ 14-420. Appraisals

If the amount in controversy justifies the expense, the taxpayer should seriously consider having the property appraised. The appraisal must set forth the fair cash value as of the assessment date (*i.e.*, January 1 of the tax year in question). Appraisal evidence is accepted at the assessor and board of review levels and at the Property Tax Appeal Board. It is unusual to have oral testimony of witnesses presented to the assessor or the Cook County Board of Review. Rather, assessors and the Cook County Board of Review tend to rely on written documentation. However, it is not unusual to have such testimony presented before a board of review outside of Cook County.

§ 14-430. The Attorney

§ 14-431. Appearance by Non-Resident Attorneys

§ 14-431.01. Cook County

There is nothing in the rules of the Cook County Assessor or Board of Review that explicitly permits the representation of a taxpayer by a non-resident attorney.

§ 14-431.02. Outside Cook County

Each county must be consulted regarding their rules and standards of representation before the local boards of review. For purposes of the Property Tax Appeal Board, an attorney is defined as an individual admitted to the practice of law in the state of Illinois, as set forth in the Illinois Supreme Court rules.

§ 14-432. Appearance by In-House Attorneys & Officers**§ 14-432.01. Cook County**

Corporate taxpayers may be represented before the assessor by an attorney, who may be an in-house attorney. Taxpayers other than individuals, including corporations, must be represented by an attorney before the Board of Review. (BOR Rule 1).

§ 14-432.02. Outside Cook County

The rules of the local board of review should be consulted prior to representation.

§ 14-440. The Consultant

The taxpayer may have a consultant appear at informal conferences with the assessor. Depending on the type of property involved and case strategy, a consultant's report addressing specific aspects of the property may be included in the materials presented to the assessor.

§ 14-450. Forms

In Cook County, the County Assessor's office may be contacted for complaint forms, rules and information bulletins. Outside of Cook County, the county Supervisor of Assessments or the county board of review may be contacted for complaint forms.

§ 14-500. APPEAL OF TAX ASSESSMENT**§ 14-501. Cook County**

In Cook County, if any taxpayer believes that any property has been overassessed, underassessed, or is exempt, he may appeal the assessment by filing a complaint with the Board of Review. 35 ILCS 200/16-95. (Add 35 ILCS 200/16-115) (See 14-512, below). However, it should be noted that the procedures in connection with exempt properties differ from those in connection with non-exempt properties. (See 14-640, below).

Prior to Public Act 89-126, the Board of Review could only hear complaints filed by taxpayers. However, Public Act 89-126 has broadened the number of par-

ties who may challenge an assessment. A complaint may now be initiated by an interested taxing body, as well as any taxpayer, or upon motion of a member of the Board of Review. 35 ILCS 200/16-95(1) & (2); 35 ILCS 200/16-115. Taxing districts in Cook County must now receive notification of all appeals to the Property Tax Appeal Board seeking a change in assessment of \$100,000 or more. 35 ILCS 200/16-180. Assessment modifications, upon motion of a member of the new Board of Review, must be made on or before the statutory assessment notification date provided under 35 ILCS 200/16-110. 35 ILCS 200/16-95.

It should be noted that:

- (1) The Board of Review has three members representing districts.
- (2) Decisions of the Board of Review *need not* be unanimous.
- (3) Taxing districts may file complaints, challenging taxpayers' assessments, with the Board of Review.
- (4) Decisions of the Board of Review may be appealed to the Property Tax Appeal Board.

§ 14-502. Outside Cook County

Outside of Cook County, a taxpayer may appeal the assessment of any property by filing a complaint with the county board of review. 35 ILCS 200/16-55. The complaint must be filed in duplicate and must identify and describe the particular property in question. The board of review will then forward one copy of the complaint to the local assessment authority who certified the assessment. 35 ILCS 200/16-55. In counties of more than 150,000 people but less than 3,000,000, if the assessment books are timely filed on or before August 10, the complaint must be filed on or before September 10. In counties of less than 150,000 people, if the assessment books are filed on or before July 10, the complaint must be filed on or before August 10. In all other cases, complaints are due within 30 calendar days after the publication of the assessment lists. 35 ILCS 200/16-55. In all cases where a change in assessed value of \$100,000 or more is sought, the board of review must also serve a copy of the petition on all taxing districts as shown on the last available bill. 35 ILCS 200/16-180.

§ 14-510. Hearing/Conference at Local Level**§ 14-511. Notice of Appeal****§ 14-511.01. Cook County**

The Cook County Board of Review may not conduct

a hearing on a taxpayer's complaint until the affected party and the assessor have been notified and given an opportunity to be heard. 35 ILCS 200/16-110. Notice is also mandated in the case of a complaint initiated by a taxing district, or upon motion of a member of the Board of Review. 35 ILCS 200/16-95.

A recent amendment to 35 ILCS 200/12-50 requires that taxpayers receive mailed notice of any changes made by the Cook County board of review. 35 ILCS 200/12-50 (as amended by Public Acts 89-126 and 89-671).

Further, 35 ILCS 200/16-147 requires that Cook County board of review reductions of assessments on residential properties must remain in effect for the remainder of the general assessment period unless the taxpayer, county assessor, or other interested party (*i.e.*, taxing districts) can show substantial cause as to why the reduced assessment should not remain in effect, or unless the decision is reversed or modified upon review. 35 ILCS 200/16-147.

§ 14-511.02. Outside Cook County

Outside of Cook County, each board of review is required to meet on or before the first Monday in June for the purpose of reviewing assessments. 35 ILCS 200/16-30. Should the board of review wish to increase an individual assessment, the affected taxpayer must receive written notice and an opportunity to be heard. 35 ILCS 200/16-30. A taxpayer who has filed a complaint with the board also has a right to be heard. 35 ILCS 200/16-55.

Each board of review has its own procedures, and may use hearing officers to assist in the processing of complaints. *Citizens Federation of St. Clair County, Inc. v. Brown*, 134 Ill. App.3d 1054, 481 N.E.2d 879 (1985). A board of review may consider not only the evidence presented at the hearing, but may use their own knowledge, experience and investigation in considering a complaint. *People ex rel. Bracher v. Millard*, 307 Ill. 556, 139 N.E. 113 (1923).

§ 14-512. Cook County Board of Review Procedures

The statute provides that a complaint before the board of review must be filed in duplicate and must be signed by the complainant or his attorney. 35 ILCS 200/16-115. The following is a brief summary of the rules of the Board of Review. Pursuant to said Rules, complaints must be filed on official complaint forms (Rule 5) on or before the official closing date for the township in which the property is located. (BOR Rule 7). Complaints filed by mail will be considered received on the date post-marked. (BOR Rule 8).

Once a complaint is filed, the Board will notify the taxpayer or its attorney of the hearing date. (BOR Rule 11). On or before the hearing date, the taxpayer must file with the Board the following information:

- 1) a log sheet furnished by the Board;
- 2) An appraisal index furnished by the Board (if an appraisal is filed);
- 3) When an appeal has been filed before the Assessor for the same year, copies of all documents that were submitted to the Assessor;
- 4) A worksheet, furnished by the Board, summarizing the pertinent facts with respect to the subject property; and
- 5) Such other documents that may be required by the Board's rules or considered pertinent by the taxpayer (*i.e.*, appraisals). BOR Rule 13.

The board of review has certain rules pertaining to the filing of documents. Generally, documents are filed on the date of hearing. However, documents may be filed at any time during the regular business hours of the Board, not less than five days prior to the hearing date. (BOR Rule 14) When documents are filed prior to the hearing date, oral argument is waived.

In addition, a recent photograph of the front and rear of the building must be submitted. (BOR Rule 17). Where lack of uniformity is claimed, recent photographs of the front of each comparable property should also be submitted (BOR Rule 18). In the case of leased or rented property, Schedule E of the federal tax returns of the subject property for the year in question, and the prior three years, should be submitted, with any necessary explanations of the income and expense statements. (BOR Rule 20). If the subject property suffers from vacancy, a vacancy affidavit should be filed. (BOR Rule 21). If a property is held in a land trust, a schedule of all beneficial owners must be submitted. (BOR Rule 23). Finally, if the property has been purchased within three years of the assessment date (January 1 of the year in question) the purchase price, date of sale, and all sale documents must be submitted to the Board. (BOR Rule 28).

Decisions of the Board may be subject to re-review at the taxpayer's request and the Board's discretion. (BOR Rule 27). A decision of the Board of Review reducing the assessment on a residential property must remain in effect for the remainder of the general assessment period unless the taxpayer, county assessor or other interested party (taxing district) can show substantial cause why the assessment should not remain in effect, or unless the decision is reversed or

modified upon review. 35 ILCS 200/16-147.

§ 14-520. Appeal to State Level

§ 14-521. Cook County

Public Act 89-126 extends the jurisdiction of the Property Tax Appeal Board to include Cook County, effective for *tax year 1996 with respect to residential property* of six units or less, and effective for *tax year 1997 forward with respect to all other property*. 35 ILCS 200/16-160. With the passage of Public Act 89-154, the Property Tax Appeal Board is now hearing appeals from decisions of the former Cook County Board of Appeals as if it were sitting as a board of review. The procedures discussed at 14-522 below apply to such appeals. However, with the extension of the jurisdiction of the PTAB, to include appeals on behalf of Cook County properties, the PTAB has issued new rules clarifying the fact that its prior practices also apply to Cook County. (See Section 14-716, below.) Specifically, (a) all proceedings before the PTAB are *de novo* and shall be based on the evidence submitted timely to it; (b) the decision of the local board of review shall have no evidentiary weight; (c) decisions may be based only on the record submitted, unless the PTAB orders or grants a hearing upon the request of any interested party; (d) decisions shall be based on “equity and the weight of the evidence.” The new PTAB rules further provide that, in the case of Cook County appeals, where sufficient probative evidence of the full market value is presented, and depending upon the property classification under the Cook County Real Property Assessment Classification Ordinance, said evidence could include the following: (a) in the case of Class 2 residential property of six units or less, the PTAB may also consider evidence of the appropriate level of assessment for property in that class, including the annual sales ratio studies for Class 2 properties in the prior three years prepared by the Illinois Department of Revenue and any other competent assessment level evidence submitted by the parties; and (b) for all other classifications of property, competent evidence by a party relevant to the level of assessment applicable to the subject property under the Illinois Constitution, the Property Tax Code and the Classification Ordinance. 86 ILL. ADMIN. CODE Sec. 1910.50, Illinois Register, September 18, 1998; PTAB Rule 1910.50.

§ 14-522. Outside Cook County

Outside of Cook County, all decisions rendered by a board of review are appealable to the Property Tax Appeal Board (PTAB), for *de novo* review, within 30 days after the taxpayer receives notification of the decision. 35 ILCS 200/12- 50; 35 ILCS 200/16-160. Alternatively, a taxpayer may seek review of the board of review decision in circuit court by filing a tax ob-

jection complaint. (See 14-530, below). Generally, it is advantageous for a taxpayer to file with the Property Tax Appeal Board, instead of filing a tax objection complaint, since the board’s decision must be based on equity and the weight of the evidence. 35 ILCS 200/16-185. In contrast to the Property Tax Appeal Board procedures, under the tax objection complaint procedure, the assessment is presumptively correct and a taxpayer must rebut it by “clear and convincing evidence” in order to prevail.

If the Board of Review increases an assessment and then adjourns without notifying the taxpayer, the taxpayer cannot appeal to the PTAB once he discovers the increased assessment, but must pay the tax under protest and then file a tax objection suit. *Villa Retirement Apartments, Inc., v. The Property Tax Appeal Board For The State Of Illinois*, 302 Ill. App. 3d 745; 706 N.E.2d 76 (1999).

Under the rules of the Property Tax Appeal Board, the taxpayer, a local taxing body, or both, may appeal a decision rendered by a local board of review. If the taxpayer is the appellant, local taxing districts may intervene in the case. Contesting parties are required to present substantive documentary evidence or legal argument challenging the correctness of the assessment. (PTAB Rule 1910.63(b)) If market value is the issue, proof of market value of the subject property may consist of an appraisal of the subject property, evidence of the cost of construction of the subject property (if proximate to the assessment date), or documentation of recent sales of suggested comparable properties. (PTAB Rule 1910.65(c)). Where market value is the basis of the appeal, the value of the property must be proved by a preponderance of the evidence. (PTAB Rule 1910.63(e)). After the presentation of the initial documentation, each party is given 30 days to present rebuttal evidence. (PTAB Rule 1910.66(a)). The Property Tax Appeal Board will then schedule a hearing in the locality of the property, with a hearing officer of the board, where testimony may be presented. This hearing has all the aspects of a trial, with formal rules of evidence, expert witnesses, including appraisers, and other witnesses depending upon the legal issues in the case. Summation is usually made orally, but is sometimes made in writing, at the request of the hearing officer, based upon the transcript of the hearing.

§ 14-523. Notice of Appeal

Petitions for appeal to the Property Tax Appeal Board must be filed in triplicate within 30 days after the postmark date or personal service date of the decision of the board of review. (PTAB Rule 1910.30). In the case of a taxpayer petition, the Property Tax Appeal Board will inform the affected governmental bodies via the county state’s attorney and the board of review.

(PTAB Rule 1910.30(l)). If a petition is filed by an interested taxing body, rather than by the taxpayer, the contesting party must furnish the name and address of the owner of the subject property. The Property Tax Appeal Board will then forward a copy of the taxing body's petition to the taxpayer. (PTAB Rule 1910.30(m)).

§ 14-530. Judicial Review & Appeal

§ 14-530.01. Cook County

Prior to the enactment of Public Act 89-126 (signed into law on July 11, 1995), decisions of the Cook County Board of Review (formerly known as the Cook County Board of Appeals) were not subject to administrative review. Taxpayers could, after paying taxes in full and under protest, file a specific objection in the circuit court seeking a refund of the excessive portion of the taxes paid. However, while taxpayers may still file suits in the circuit court challenging assessed valuations, the procedure and burden of proof have changed. (See Section 14-715, below).

Specific objections (the judicial remedies available prior to passage of Public Act 89-126) could be filed by taxpayers (as objectors) in response to the Collector's application for judgment against unpaid taxes. The time period for filing such objections was determined by court order, based on the date of the Collector's application for judgment. Tax objection complaints (the judicial remedies available subsequent to the passage of Public Act 89-126) may be filed by taxpayers as plaintiffs. The time period for filing tax objection complaints is determined based on the first penalty date (due date) of the final installment of taxes. Although exhaustion of administrative remedies (appealing the Assessor's final assessment to the Board of Appeals or, after December 7, 1998, the Board of Review), is still a necessary prerequisite to filing a tax objection complaint, it is no longer necessary for taxpayers to file written protest letters with the county Collector. With the passage of Public Act 89-126, taxes are deemed paid under protest (without the filing of a written letter of protest) if they are paid *in full, within 60 days from the first penalty date of the final installment of taxes*, and if a tax objection complaint is filed in the Circuit Court within 75 days after the first penalty date of the final installment of taxes. (35 ILCS 200/23-5 and 35 ILCS 200/23-10). *For example*, second installment 1996 Cook County taxes were due on September 19, 1997. Under Public Act 89-126, if a taxpayer has appealed the Assessor's final 1996 assessment on a property to the Board of Appeals and has paid the real estate taxes, in full, by November 18, 1997—60 days from September 19—the taxpayer (as plaintiff) might file a tax objection complaint in the Circuit Court of Cook

County, provided such Complaint is filed by December 3, 1997 (75 days after September 19).

Under a tax objection complaint, the assessment and taxes are presumed to be correct and legal. However, the presumption is rebuttable. Accordingly, the taxpayer (as plaintiff in the tax objection complaint) has the burden of proving that the assessment and/or taxes are incorrect or illegal (or any other contested matter) by "clear and convincing" evidence. 35 ILCS 200/23-15(b)(2). Under this statute, if the taxpayer claims that the valuation (assessment) of a property is incorrect, the court must consider the correctness and legality of the assessment *without consideration* to the intent, motivation, methods, practices and procedures followed in making and reviewing the assessment. The burden of proof of "clear and convincing evidence" is substantially less than the burden of "constructive fraud" previously necessary to prevail under a specific objection. The procedural requirements of Public Act 89-126 were effective for tax year 1994 in Cook County, and state wide for tax year 1995. 35 ILCS 200/23-10. The abolition of the doctrine of constructive fraud (see 14-715, below) and its replacement with the standard of "clear and convincing evidence" affects all pending tax objection matters, including those initiated under prior law. 35 ILCS 200/23-15(d). Hearings by the court on tax objection complaints (like those on specific objections), are *do novo*. 35 ILCS 200/23-15 (b)(3).

A tax objection complaint may be amended "to the same extent which, by law, could be made in any personal action pending in the court." 35 ILCS 200/23-15(a). Prior law provided for amendments (*People ex rel. Harris v. Chicago & N.W. RR.*, 8 Ill.2d 246, 133 N.E.2d 22 (1956)), but the amendments could not be used to add a new, distinct and unrelated objection. *People ex rel. Brittain v. Outwater*, 360 Ill. 621, 196 N.E. 835 (1935). It is unclear whether the language of 35 ILCS 200/23-15(a) concerning amendments provides a basis for a departure from prior practice.

Tax objection complaints (like specific objections filed under prior law) may be based not only on valuation, but also state and federal constitutional claims concerning the assessment process, including lack of uniformity with similar property or improper notice. *LaSalle National Bank v. County of Cook*, 57 Ill.2d 318, 312 N.E.2d 252 (1974); *Andrews v. Foxworthy*, 71 Ill.2d 13, 373 N.E.2d 1332 (1978); *People ex rel. Hawthorne v. Bartlow*, 111 Ill. App.3d 513, 444 N.E.2d 282 (1983).

As stated in 14-116 above, Public Act 89-126 extends the jurisdiction of the Property Tax Appeal Board to include Cook County, effective for *tax year 1996* with respect to *residential property of six units or less*, and effective for *tax year 1997* with respect to *all other*

property. 35 ILCS 200/16-160. With the availability of the Property Tax Appeal Board to Cook County taxpayers, consideration should be given to filing an appeal with the PTAB rather than filing a tax objection complaint in court. In contrast to a tax objection complaint, the taxpayer's evidentiary burden before the PTAB is based on "equity and the weight of the evidence," which is a lesser burden than "clear and convincing evidence." Additionally, in matters filed with the PTAB, there is no presumption that the assessment is correct 35 ILCS 200/16-185.

§ 14-530.02. Outside Cook County

Final administrative decisions rendered by the Property Tax Appeal Board are subject to review under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.; 35 ILCS 200/16-195). However, appeals *must* be made directly to the appellate court if a change in assessed valuation of \$300,000 or more was sought. 35 ILCS 200/16-195. Decisions in matters wherein a change of *less than* \$300,000 in assessed valuation was sought may be appealed to circuit court. This \$300,000 assessed valuation number is by *parcel*. Thus, even if multiple parcels are consolidated on appeal, as long as assessment change is less than \$300,000 for each parcel, the case lies properly in Circuit Court. *Pace Realty Group, Inc., et al., v. The Property Tax Appeals Board*, 306 Ill. App. 3d 718, 713 N.E.2d 1249 (1999). Under the Administrative Review Act an appeal may be brought by either the taxpayer, board of review, or any intervening taxing districts. 735 ILCS 5/3-101 et seq.; *Will County Board of Review v. Property Tax Appeal Board*, 48 Ill.2d 513, 272 N.E.2d 32 (1971). The appellant has the burden of proving the issues raised in the complaint. Factual determinations and conclusions are considered *prima facie* true and correct. Differences of opinion as to value are insufficient to reverse an assessment. Moreover, a determination of the Property Tax Appeal Board will not be overturned unless manifestly against the weight of the evidence. *Mead v. Board of Review of McHenry County*, 143 Ill. App. 3d 1088, 494 N.E.2d 171 (1986). Finally, the local board of review is a necessary party to an appeal from a PTAB decision, even in cases where the law permits direct appeals to the Appellate Court. *Villa Retirement Apartments, Inc., v. The Property Tax Appeal Board For The State Of Illinois*, 302 Ill. App. 3d 745, 706 N.E.2d 76 (1999) *See also, Robert Spiel, v. The Property Tax Appeal Board*, 1999 Ill. App. LEXIS 902 (2nd Dist., December 22, 1999)..

If the taxpayer elects not to pursue relief before the Property Tax Appeal Board, the taxpayer may file a tax objection complaint in the circuit court seeking a refund of excessive taxes. In order to be eligible for filing a tax objection complaint suit, the taxpayer must pay all taxes due, *within 60 days from the first*

penalty date of the final installment of taxes. Pursuant to Public Act 89-126 and 35 ILCS 200/23-10, all administrative remedies must be exhausted (*i.e.* a complaint must be filed before the Board of Review) before the taxpayer may file a tax objection complaint. While hearings of tax objection complaints are *de novo*, the taxpayer must prove by "clear and convincing evidence" that the assessment and/or taxes are incorrect or illegal (or any other contested matter) in order to prevail under a tax objection complaint. (35 ILCS 200/23-15(b)(2)).

Specific objections (the judicial remedies available prior to passage of Public Act 89-126) could be filed by taxpayers (as objectors) in response to the Collector's application for judgment against unpaid taxes. The time period for filing such objections was determined by court order, based on the Collector's application for judgment. Tax objection complaints (the judicial remedies available subsequent to the passage of Public Act 89-126) may be filed by taxpayers as plaintiffs. The time period for filing tax objection complaints is determined based on the first penalty date (due date) of the final installment of taxes. Although exhaustion of administrative remedies (appealing the Assessor's final assessment to the Board of Review), is still a necessary prerequisite to filing tax objection complaint, it is no longer necessary for taxpayers to file written protest letters with the county Collector. With the passage of Public Act 89-126, taxes are deemed paid under protest (without the filing of a written letter of protest) if they are paid *in full, within 60 days from the first penalty date of the final installment of taxes*, and if a tax objection complaint is filed in the Circuit Court within 75 days after the first penalty date of the final installment of taxes. (35 ILCS 200/23-5 and 35 ILCS 200/23-10). *For example*, second installment 1996 DuPage County taxes were due on September 2, 1997. Under Public Act 89-126, if a taxpayer has appealed the Assessor's final 1995 assessment on a property to the Board of Review and has paid the real estate taxes, in full, by November 3, 1996—60 days from September 2 (actually, November 1 is 60 days from September 2, but November 1 is a Saturday)—the taxpayer (as plaintiff) might file a tax objection complaint in the Circuit Court of DuPage County, provided such Complaint is filed by November 17, 1997 (actually, November 16, a Sunday, is 75 days after September 2). (35 ILCS 200/23-10).

§ 14-531. Notice of Appeal

§ 14-531.01. Cook County

§ Taxpayers must file three copies of the tax objection complaint (including all exhibits and attachments), in accordance with court rules, to be distributed to the state's attorney and collector by the

clerk of the court. Circuit Court Rule 10.8 § 1-20.

§ 14-531.02. Outside Cook County

Outside Cook County, three copies of the tax objection complaint must be filed with the clerk of the court. The clerk of the court will distribute copies of the complaint to the state's attorney and the county clerk. In addition, the complaint must contain on its first page a listing of the taxing districts against which the objection is directed. 35 ILCS 200/23-10.

If a decision of the Property Tax Appeal Board is being appealed to appellate or circuit court, the appeal is handled like any other suit, and notice is governed by the Illinois Code of Civil procedure, the Rules of the Illinois Supreme Court, appellate court rules, and local court practice.

§ 14-540. Practice & Procedure

§ 14-541. Use of Appraisals

Appraisals are commonly used at all administrative and judicial levels of the assessment process.

§ 14-542. Expert Witnesses

Expert witnesses, particularly appraisers, are allowed to testify before a court in a tax objection complaint suit and before the Property Tax Appeal Board.

§ 14-543. Forms & Pleadings

§ 14-543.01. Cook County: Circuit Court Rule 10.8

The Circuit Court of Cook County has adopted new rules for processing tax objection complaints (Circuit Court Rule 10.8) in response to the abolition of the doctrine of constructive fraud, replacement of constructive fraud with the standard of "clear and convincing evidence" and the current backlog of tax objection cases. Due to the suspension of court objection procedures prior to resolution of constitutional issues by the Supreme Court ruling in March, 1998, (*People ex rel. Devine v. Murphy, et al.*, 181 Ill. 2d 522, 693 N.E.2d 349, 1998 Ill. LEXIS 359, 230 Ill. Dec. 220 (1998)), a tremendous backlog has been created in Cook County. As a result, the Court on December 8, 1999, issued draft practice and procedural rules with the goal of eliminating the backlog of cases by the year 2004. Once the backlog is cleared up, the goal is to resolve most cases within 22 months of filing. Additional procedures have been adopted for small claim cases (controversies that do not exceed \$30,000 of principal tax refund for each contested tax year). Please note that these rules may be subject to further revisions.

In Cook County a valuation complaint must provide at least the following information: (a) the name of the plaintiff and the plaintiff's attorney; (b) the location of the subject property by common street address; (c) the township in which the property is located; (d) the volume(s) and permanent index number(s) which identify the subject property on county records; (e) the final assessed value and equalized assessed value of the subject property; (f) the total amount of taxes paid, and whether the payment was made within the time required by law; (g) a statement indicating whether any available administrative remedy was exhausted; (h) a statement of the factual or legal basis for the plaintiff's claim of relief; and (I) the relief requested. C.C.R. 10.8 § 2-10.

Additional forms, such as pre-trial orders, may be found in Circuit Court Rule 10.8, with amendments.

Rule 10.8 provides specific dates for each step of the discovery, settlement and trial process.

• **Order Setting the Case Management Call**—Within the first month after a case is activated, the Court will enter an order setting the § 2-50 document production date (see below) as being the first working Tuesday of the second month following the date of the Order. The Order also sets the Case Management Call date.

• **Document Production**—The taxpayer's initial documentation in compliance with C.C.R. 10.8 § 2-50 must be filed by the date set by the Court's initial Order, which will generally be a date in the third month from the date of activating the case. Said compliance requires, at minimum, that the plaintiff produce all materials in the plaintiff's attorney's file. Plaintiff may produce additional material that he deems relevant. Plaintiff should be prepared to bring to the court receipted copies of documents delivered to the State's Attorney. Failure to comply with § 2-50 will result in sanctions. (C.C.R. 10.8 § 2-65) Cases may be placed on the dormant calendar and can only then be reinstated upon showing of good cause or when the Court is again current.

• **Case Management Call**—9:30 a.m. on the first working Tuesday of the month specified in the Court's initial Order, generally five months after the filing of the case. The purpose of the Case Management Call is to: determine compliance with initial discovery, to hear motions for sanctions thereof (at 10:30 a.m.), and to set the dates for formal discovery; merge tax year cases where appropriate; establish a time schedule for the disposition of the case; and to provide the option of proceeding as a small claims case, if appropriate. ***It is the responsibility of the Plaintiff to prepare the Case Management Call Order and forward it to the State's Attorney at least 14 days prior to the Case***

Management Call. Parties need not appear in court if an agreed order is timely submitted. Failure to comply with these procedures may result in sanctions.

- **Mandatory Settlement Period**—During the next five months subsequent to the Case Management Call the Court expects both parties to attempt to settle. Formal discovery is activated in the tenth month of the case.

- **Trial Management Call**—9:30 a.m. on the first working Thursday of the tenth month of the case. Each unresolved case is heard on the Trial Management Call five months after being heard on the Case Management Call. The Trial Management Call is a forum for resolving procedural disputes between parties, and *appearance by both the attorney for the taxpayer and the Assistant State's Attorney is mandatory*. A settlement conference with the Court may be pursued provided that the parties have agreed upon the need, or lack thereof, for expert witnesses.

Parties may request modification of scheduled dates as set forth in the Case Management Order. ***It is the responsibility of the Plaintiff to prepare the Trial Management Order.***

- **Activation of discovery**—All previously filed discovery is stayed until five months after the Case Management Call, and is activated on the first working Tuesday of the tenth month of the case. (Note, that discovery is actually activated two days before the Trial Management Call.) Responses to discovery must be made within twenty-eight (28) days of the discovery activation date.

- Opinion witnesses must be disclosed, and opinion witness reports must be produced, by the fifteenth month after initiating the case, as set forth in the initial Court Order or the Case Management Order. Failure to disclose one's expert by said date will be deemed an election not to use such opinion expert.

- New discovery, including deposition notices, must be initiated by the seventeenth month following the initiation of the case and responses to all discovery must be made by the nineteenth month after the initiation of the case.

- **Case Assignment Call**—2:00 p.m. on the first working Tuesday of the twentieth month after the case is initiated, cases are assigned to trial judges. Plaintiff must forward proposed pre-trial order to the State's Attorney at least 14 days prior to the due date and the State's Attorney must return the same to the Plaintiff within 7 days of the hearing date, and the Plaintiff must submit the signed order to the Court before the hearing date. The pre-trial order is due on a date set in the 21st month from the date the case

was initiated

- **Trial**—Trial of all unresolved cases will be scheduled twenty-two months after the initiation of the case.

- **Small Claims Cases**— Cases determined to be small claim cases at the Case Management Call shall be immediately assigned to a trial judge pursuant to C.C.R. 10.8 §§ 2-75 ad 2-80 for expedited disposition. Said cases shall be tried, settled, or dismissed within six months of the Case Management Call.

§ 14-543.02. Outside Cook County

There is no uniform system of forms and pleadings in Illinois. Each county has its own forms. However, there are no forms for tax objection complaint suits.

§ 14-544. Method of Filing/Delivery

§ 14-544.01. Cook County

A tax objection complaint is filed with the Clerk of the Circuit Court of Cook County, County Department, County Division. The current filing fee is \$80.

§ 14-544.02. Outside Cook County

The fees for filing a tax objection complaint outside of Cook County vary from county to county.

Petition forms for the Property Tax Appeal Board are available from the PTAB, the county board of review, and the office of the county supervisor of assessments. (PTAB Rule 1910.80) Since a taxpayer only has 30 days from the date of a board of review decision to file a petition with the Property Tax Appeal Board, it is the informal policy of the board to consider a petition "filed" on the date a form is timely requested in writing. Therefore, requests for petition forms should be in writing accompanied by a certified mail return receipt on or before the date formal appeals are due. There is no fee for filing a petition with the board.

§ 14-545. Appearances for Taxpayer [who can appear]

An individual taxpayer may represent himself, *pro se*, before the board of review, the Property Tax Appeal Board, or in court.

§ 14-550. Payment of Property Taxes & Protest Procedures

§ 14-551. Notice of Protest

It is no longer necessary for taxpayers to file written protest letters with the county Collector. With the

passage of Public Act 89-126, taxes are deemed paid under protest (without the filing of a written letter of protest) if they are paid *in full, within 60 days from the first penalty date of the final installment of taxes*, and if a tax objection complaint is filed in the Circuit Court within 75 days after the first penalty date of the final installment of taxes. (35 ILCS 200/23-5 and 35 ILCS 200/23-10).

§ 14-552. Time for Payment

In Cook County, and other counties that have adopted the estimated tax bill procedure, tax bills must be paid within 60 days from the first penalty date of the second installment of taxes as a prerequisite to filing a tax objection complaint. In non-installment counties, the due date for the final payment of taxes is 60 days from the penalty date for the final tax payment. (35 ILCS 200/23-5). However, interest of 1.5% per month must be paid after the first penalty date (due date). 35 ILCS 200/23-5.

§ 14-553. Grounds for Objection

An objection to a tax may be based not only on valuation, but also state and federal constitutional claims concerning the assessment process, including lack of uniformity with similar property, and improper notice. A taxpayer may also object if part of the tax being collected is to be applied to an illegal levy.

§ 14-554. Equitable Remedies

Historically, a taxpayer could seek an injunction against the collection of taxes, after exhaustion of administrative remedies, on the ground of “constructive fraud,” which was defined to occur when either (1) the tax was unauthorized by law; (2) the property to be taxed was exempt; or (3) the assessment was fraudulently excessive and the remedy at law (the tax objection procedure) was inadequate. *Clarendon Associates v. Korzen*, 56 Ill.2d 101, 306 N.E.2d 299 (1973). However, an extraordinary set of circumstances, including exhaustion of all administrative remedies, has been required to prevail under an injunction suit. *Hoyne Savings & Loan Assn. v. Hare*, 60 Ill.2d 84, 322 N.E.2d 833 (1974). Mere inability to pay, absent other equitable factors, has been insufficient to permit equitable relief. *Wolf v. Hynes*, 137 Ill. App.3d 987, 485 N.E.2d 463 (1st Dist., 1985). However, in light of the abolition of the doctrine of “constructive fraud” as the evidentiary standard in specific objection suits, and its replacement with the burden of proof of “clear and convincing” evidence, it may be argued that proof of “constructive fraud” is no longer necessary to prevail under an injunction suit. Rather, all that may be necessary, after exhaustion of administrative remedies, may be proof, by clear and convincing evidence, that the valuation (as-

essment) of a property is incorrect. (See 14-530.01 above).

The Illinois Supreme Court, upon direct appeal, reversed the decision of Cook County Circuit Court Judge Michael J. Murphy stating that the abolition of the doctrine of constructive fraud by the legislature violated separation of powers. This Cook County Circuit Court decision had resulted in a suspension of property tax appeals processed by the Circuit Court of Cook County from February of 1997 through March of 1998. The Supreme Court, in a 4-3 decision, held that the legislature had the authority to permit *de novo* trials of property tax assessments in the Circuit Court, as well as to establish an evidentiary burden on taxpayers of rebutting assessments based upon “clear and convincing” evidence. The Supreme Court also held that the Circuit Court was not a rubber stamp, but could reject settlement agreements if the court believed that fraud or inadequate representation had occurred. *People ex rel. Devine v. Murphy, et al.*, 181 Ill. 2d 522, 693 N.E.2d 349, 1998 Ill. LEXIS 359, 230 Ill. Dec. 220 (1998).

Confusion regarding the continued existence of “constructive fraud” as a ground for equitable relief remains, as is illustrated by conflicting, appellate court decisions in injunction cases. For example, it is impossible to reconcile *United Legal Foundation v. DOR*, 650 N.E. 2nd 1064, 272 Ill. App. 3d 666 (1st Dist., 1995) which (as stated in the dissent) ignores *Clarendon, Hoyne* and *First National Bank v. Rosewell with Communications & Cable, Inc. v. DOR*, 275 Ill. App. 3d 680, 655 N.E.2d 1078, *cert. den.*, 164 Ill.2d 560 (1st Dist., 1995), which greatly expands (or possibly restores) the definition of an “unauthorized” tax entitled to equitable relief. It should be noted that *United Legal Foundation v. DOR* and *Communications & Cable, Inc. v. DOR* originated with different panels of the same appellate district, illustrating the inconsistent development of case authority on this issue.

§ 14-555. Certificates of Error

§ 14-555.1. Cook County

The Cook County Assessor may, in his discretion, correct any error that he may discover at any time prior to judgment by issuing a Certificate of Error. 35 ILCS 200/14-15. In cases where the board of review has previously received a complaint for the same tax year, the board of review must concur in the recommendation of the assessor before a certificate of error may issue. Additionally, all Certificates of Error resulting in changes in assessed valuation of \$100,000 or more must be approved by the circuit court. After the Certificate of Error issues, the state’s attorney, as the attorney for the assessor, presents the Certificate

of Error to the circuit court for its approval. The court is not bound to accept the Certificate; and it may reject it in its discretion and enter judgment for the collector. *In re Application of County Treasurer*, 109 Ill. App.3d 440, 440 N.E.2d 981 (1982). Certificates of Error resulting in changes in assessed valuation of less than \$100,000 may be approved and certified within the Assessor's Office. Where a taxpayer has missed deadlines or otherwise failed to present its case before the assessor, the Certificate of Error process presents one last opportunity to obtain relief. However, a taxpayer has no right to intervene in a Certificate of Error proceeding. *Chicago Sheraton Corp. v. Zaban*, 71 Ill.2d 85, 373 N.E.2d 1318 (1978).

§ 14-555.2. Outside Cook County

Outside of Cook County, a supervisor of assessments may issue a certificate of error only for "errors other than errors of judgment as to the valuation of property" prior to the entry of judgment. 35 ILCS 200/14-20. The certificate must be endorsed by the local board of review, and may then be used by the taxpayer in defense of the collector's application for judgment. 35 ILCS 200/14-20. Similarly, the board of review itself, may issue a certificate of error. 35 ILCS 200/16-75.

§ 14-560. Jurisdictional Requirements

§ 14-561. Exhaustion of Remedies & Payment Under Protest

A taxpayer who files a tax objection complaint suit in circuit court needs to show that a complaint for relief was timely filed with the board of review. *People ex rel. Nordlund v Lans*, 31 Ill.2d 477, 202 N.E.2d 543 (1964). Further, all taxes due for the year in question must be paid, in full within 60 days from the first penalty date of the final installment of taxes for the year in question. (35 ILCS 200/23-5).

Should the taxpayer seek equitable relief, exhaustion of administrative remedies is also required before the taxpayer may plead that he has no adequate remedy at law. *Hoynes Savings & Loan Assn. v. Hare*, 60 Ill.2d 84, 322 N.E.2d 833 (1974).

However, if a taxpayer first receives notice of an increased assessment after the board of review has closed its books, he need not apply for administrative relief before filing a tax objection complaint. *Anest v. Lake County*, 147 Ill. App.3d 243, 497 N.E.2d 1327 (1986).

§ 14-565. Redemption after Tax Sale & Tax Deeds

A taxpayer has the right to redeem property that has been sold for taxes, by paying the full amount due,

plus penalty and interest. A protest of the taxes is not required to bar a tax deed. *A.P. Properties, Inc., v. Robert H. Goshinsky et al.*, 186 Ill. 2d 524, 714 N.E.2d 519, 1999 Ill. LEXIS 953, 239 Ill. Dec. 600 (1999).

Two First District cases clarify the right of a party to seek indemnification for loss of property by tax sale. Section 21-305 of the Property Tax Code provides that "(a) Any owner of property sold under any provision of this Code, who without fault or negligence of his or her own sustains loss or damage by reason of the issuance of a tax deed under Sections 22-40 or 21-445 and who is barred or in any way precluded from bringing an action for the recovery of the property . . . has the right to indemnity for the loss or damage sustained." 35 ILCS 200/21-305 (West 1994). The following cases provide two examples of property owners who *were not* "barred or precluded from bringing an action for the recovery of the property" and, therefore, were not entitled to indemnification. (*Id.*).

First, in the case of *In re Application of County Treasurer*, 301 Ill. App. 3d 883, 235 Ill. Dec. 430, 704 N.E.2d 1003 (1999) (*Baez v. Rosewell*), cert. denied 714 N.E.2d 525 (May, 1999), the court held that since owners of property that was sold at a tax sale could have filed a petition to vacate the deed but failed to do so, they were not "barred or otherwise precluded" and, therefore, were not entitled to indemnification.

In the case of *In re Application of County Treasurer*, 304 Ill. App. 3d 864, 710 N.E.2d 150 (1999) (*Britts v. Rosewell*) the court affirmed the lower court's ruling that the petitioner was entitled to relief, under section 2-1401 of the Code of Civil Procedure, since she had right to redeem the property by reimbursing the tax deed purchaser costs and interest—and failed to timely exercise that right. Therefore, she was not "barred" from bringing action to recover the property and, hence, not entitled to indemnification.

§ 14-600. EXEMPTION FROM TAXATION

Certain constitutional and statutory exemptions exist in Illinois.

§ 14-610. Exempt Property

Exempt property includes property owned or used by not-for-profit educational institutions, charitable organizations, burial grounds, state property, municipal property and property owned by religious organizations and used for religious purposes. 35 ILCS 200/15-10 *et seq.*

§ 14-620. Exempt Taxpayers

Not-for-profit status does not guarantee exemption since the exemption is based on the specific use of the property and not merely on its ownership. Thus, property owned by a non-exempt entity may be exempt due to its use by a tax-exempt entity, and property owned by a tax-exempt entity may be taxable if used for a non-exempt purpose. *Weslin Properties, Inc., v. Dept. of Revenue*, 157 Ill. App.3d 580, 510 N.E.2d 564 (2d Dist., 1987).

§ 14-630. Constitutional Issues

The statutory exemptions listed at 35 ILCS 200/15-10 *et seq.* are permitted by Article IX, section 6 of the 1970 Illinois constitution.

§ 14-640. Practice & Procedure [in Exemption Cases]

Applications for tax exemption are considered by the Board of Review, and confirmed by the Department of Revenue. Once an exemption is granted, the party claiming the exemption must have it certified annually. The fact that other property has been assessed as exempt, or that the taxpayer's property had been assessed as exempt in prior years, will not control the current status of the taxpayer's property. *In re Application of County Treasurer & County Collector*, 106 Ill. App.3d 785, 436 N.E.2d 247 (3d Dist. 1982).

In Cook County the application for exemption must be made to the Board of Review. 35 ILCS 200/16-95, 35 ILCS 200/16-130. An exemption claim should be filed during the regular time for filing complaints with the board. The complaint should include the Board of Review complaint form and a Department of Revenue Application for Property Tax Exemption form. The complaint may also include an affidavit as to the property's tax-exempt use, photographs of the exterior and interior of the property, and a copy of the deed to the property.

Outside of Cook County, a party claiming exemption must make an application to the county board of review. 35 ILCS 200/16-70. The general complaint form, O.F.A. 230, may be used; however, local practice should be confirmed before filing an application. Outside of Cook County, for all exemption applications other than religious applications, a Form PTAX-300 should also accompany the complaint (Form PTAX-300-R is used for religious applications). Forms are available from the Department of Revenue. Complaints may be accompanied, as discussed above, by affidavits and other data.

Decisions of the Board of Review as to the status of a property are not final until approved by the Department of Revenue. 35 ILCS 200/16-70. To ensure that the Department of Revenue has all the pertinent facts

concerning an application for exemption, the applicant should also file with the Department of Revenue a Form PTAB-300.

After the Department of Revenue receives an exemption request, the Department may request additional information regarding the property prior to rendering a decision. It is also not unusual to grant the taxpayer an informal hearing on the property's status. If the Department of Revenue rejects the taxpayer's exemption application, the taxpayer is entitled to a formal hearing on the property's status by applying, within 20 days (by post-mark) from the date the decision is certified, for such a hearing. 35 ILCS 200/8-35.

Denial of an exemption certificate by the DOR is not grounds for equitable relief. *United Legal Foundation v. DOR*, 650 N.E.2d 1064, 272 Ill. App. 3d 666 (1st Dist., 1995). Rather, administrative review is the appropriate remedy. As stated in 35 ILCS 200/8-40, the Administrative Review Law (735 ILCS 5/3-101 *et seq.*), and the rules adopted under it, govern all judicial review of final administrative decisions rendered by the Department of Revenue.

§ 14-650. Remedies for Improper Assessment of Exempt Property

Certain provisions exist specifically to assist exempt property that is improperly assessed as taxable. Such taxation may occur due to reasons such as failure of the user of the exempt property to renew its annual application for exemption.

First, taxes on property believed to be exempt need not be paid as a prerequisite to filing a tax objection complaint. 35 ILCS 200/21-175, 35 ILCS 200/23-5 and 200/23-10. However, it should be noted that such objections *may only be filed to prevent the entry of judgment and order of sale of unpaid taxes* while a proceeding to determine the exempt status of the property is pending before the Board of Review and/or Department of Revenue. Tax objection complaints *may not be filed* to appeal the denial of exempt status by the Department of Revenue. Appeals of Department of Revenue decisions denying exemption must be made under the Administrative Review Law (735 ILCS 5/3-101 *et seq.*), and the rules adopted under it. 35 ILCS 200/23-25 and 35 ILCS 200/8-40.

Second, certificates of error in connection with exempt property may be issued for any tax year from 1987 to the current tax year. 35 ILCS 200/14-25(a).

Finally, an appropriate equitable remedy appears to remain available to challenge assessments on properties which are believed to be exempt, but which have been assessed for assessment years prior to 1986. Since equitable relief, under the doctrine of "construc-

tive fraud,” has been a common last resort for removing exempt property from the tax rolls, practitioners who represent exempt property should be aware that this last resort may have been eliminated by Public Act 89-126. (See 14-554, above).

§ 14-700. MISCELLANEOUS ITEMS

§ 14-710. Current Issues & Topics [& Pending Issues]

§ 14-715. New Construction

Owners of new buildings or other improvements added after January 1 must provide notice to the assessor and request a reassessment within 30 days of the issuance of an occupancy permit, or within 30 days of completion of the improvements. The owner is then liable, on a proportionate basis, for the increased real property taxes occasioned by the improvements, from the date when the occupancy permit was issued, or from the date the new or added improvement was inhabitable and fit for occupancy or intended customary use, to December 31 of that year. 35 ILCS 200/9-180.

§ 14-716. New Rules Established by the PTAB Clarifying Practices With Respect to Cook County Properties

With the extension of the jurisdiction of the PTAB, to include appeals on Cook County properties (see 14-116), the Board has issued new rules clarifying the fact that its prior practices also apply to Cook County. Specifically, (a) all proceedings before the PTAB are de novo and shall be based on the evidence submitted timely to it; (b) the decision of the local board of review shall have no evidentiary weight; (c) decisions may be based only on the record submitted, unless the Board orders or grants a hearing upon the request of any interested party; (d) decisions shall be based on “equity and the weight of the evidence.” The Board further provided that, in the case of Cook County appeals, where sufficient probative evidence of full market value is presented and depending upon the property classification under the Cook County Real Property Assessment Classification Ordinance, said evidence could include the following: (a) in the case of Class 2 residential property of six units or less, the Board may also consider evidence of the appropriate level of assessment for property in that class, including the annual sales ratio studies for Class 2 properties in the prior three years prepared by the Illinois Department of Revenue and any other competent assessment level evidence submitted by the parties; and (b) for all other classifications of property, competent evidence by a party relevant to the level of assessment applicable to the subject property under the Illinois Constitution, the Property Tax Code, and the Classi-

fication Ordinance. 86 ILL. ADMIN. CODE Sec. 1910.50, Illinois Register, September 18, 1998. PTAB Rule 1910.50.

§ 14-717. Recent PTAB Related Decisions

The Appellate Court of the Second District clarified the evidentiary standards before the PTAB. Challenges based on excessive valuation must be proved by a preponderance of the evidence (86 Ill. Adm. Code § 1910.63(e) (eff. January 1, 1990)) PTAB Rule 1910.63(e)), while only those based on a lack of uniformity must be proved by clear and convincing evidence. *The Winnebago County Board Of Review, v. The Property Tax Appeal Board And Alpine Bank Of Illinois, Inc.*, 313 Ill. App. 3d 179; 728 N.E.2d 1256; 2000 Ill. App. LEXIS 298; 245 Ill. Dec. 899 (2nd Dist., 2000). See 14-522, above. (*Revoking Techalloy Co. v. Property Tax Appeal Board*, 291 Ill.App3d 86, 92, 225 Ill.Dec. 262, 683 N.E.2d 206; Cited on page 7 of print out or page 14 of electronic file).

The owner of real property on January 1 of any year is liable for the taxes on the property for that year. 35 ILCS 200/9-175 (West 1996). However, as held by the Third District Appellate Court, when there is a shift of ownership interest, or acceptance under contract of the tax burden (even absent an ownership shift), the party that pays the taxes has standing to appeal the assessment before the PTAB. On a separate point, the Court held that the PTAB abused its discretion when it refused to allow an offer of proof of a document for purposes of impeachment. *Kankakee County Board Of Review, v. Property Tax Appeal Board, Heinz Pet Products Company*, 316 Ill. App. 3d 148, 735 N.E.2d 1011, 2000 Ill. App. LEXIS 697, 249 Ill. Dec. 186 (3rd Dist., 2000), cert. den., 738 N.E.2d 927, 2000 Ill. LEXIS 1438, 250 Ill. Dec. 458 (Sup. Ct., 2000).

The Illinois Property Tax Appeal Board has held that, in determining the appropriate assessment of a property in Cook County, it is proper to apply the three year weighted average median level of assessment for similarly classified property, derived in the most recent Assessment/Sales Ratio Study conducted by the Illinois Department of Revenue. *Robert Bosch Corporation*, PTAB Docket Nos. 97-22106-I-3 and 97-22107-I-3 and *Corporate Lakes of Matteson LLC*, PTAB Docket Nos. 97-20270-C-3 thru 97-20286-C-3. In these decisions, the PTAB notes that it systematically uses the results of the Illinois Department of Revenue sales ratio studies to determine the proper assessment levels for properties located *outside* of Cook County, and for Class 2 residential properties *within* Cook County. However, the Cook County Board of Review argued that property (other than Class 2 residential property) located *within* Cook County should be assessed based on the levels of as-

assessment set forth in the Cook County Classification Ordinance. However, the PTAB found the evidence submitted by the Board of Review to be unpersuasive. The PTAB notes the Illinois Supreme Court's position in *Airey v. Department of Revenue*, 116 Ill.2d 528, 508 N.E.2d 1058 (1987), that "this is an imperfect world; hence, assessment levels vary." Moreover, Illinois courts have recognized that "if property within the taxing district is assessed on a debased proportion of the fair market value, all property shall be assessed on the same basis." *People ex. rel. Wangelin v. Gillespie*, 358 Ill. 40, 192 N.E. 664 (1934); *M.F.M. Corp. v. Cullerton*, 16 Ill. Appl. 681, 686, 306 N.E. 2d 505, 508 (1st Dist., 1973) citing *People ex. rel. Rhodes v. Turk*, 391 Ill. 424, 63 N.E.2d 513 (1945). Accordingly, the PTAB held that, in order to determine the "correct assessment," it must debase the market value of the subject property in the same proportion as other property within its class. Since no other evidence of the actual level of assessment was provided in either case, the PTAB found that the results of the Department of Revenue sales ratio studies provided the proper level of assessment. *These PTAB decisions have been appealed, briefed, and decisions are pending.*

§ 14-718. Price Fixing at Tax Sales Disallowed

The Illinois Supreme Court recently upheld an appellate court decision which permitted the Cook County Treasurer to deny penalty bids that were designed to fix the return on tax sales at the highest possible rate. Under Illinois law, when a property is offered for tax sale, only the penalty is subject to competitive bidding. (Taxes and interest are not subject to competitive bidding.) The tax buyer who bids the *lowest* penalty is the successful bidder. However, during the 1996 annual tax sale (in calendar year 1998), tax buyers bid at 18% (the highest statutory rate) on 95% of the properties offered for sale. The winning bids were then determined by lot. Shortly thereafter, the County Treasurer issued an administrative ruling that held, in effect, that when there was multiple bidding she could declare the property forfeited and not recognize any bid. The Supreme Court upheld this procedure as consistent with the legislature's intent to minimize penalties on taxpayers. *Phoenix Bond & Indemnity Company, et al., v. Maria Pappas, Cook County Treasurer And Ex-Officio County Collector Of Cook County*, (Docket No. 89098, Supreme Court of Illinois, 2000 Ill. LEXIS 1715, 12/1/00)

§ 14-730 . Where to get Forms

§ 14-731. Cook County

Classification bulletins for different classes of property, Assessment Complaints and appropriate worksheets and form affidavits may be obtained from

the Cook County Assessor's Office, Cook County Building, Room 301, 118 N. Clark Street, Chicago, IL, 60602. Phone: 312-603-7800. Information and forms may also be obtained from the Cook County Assessor's web site at <http://www.cookcountyassessor.com>.

The Official Rules of the Board of Review of Cook County and complaint forms may be obtained from the Board of Review of Cook County, Room 601 County Building, 118 N. Clark Street, Chicago, IL 60602. Phone: 312-603-5542

Circuit Court Rule 10.8 (Tax Objection Proceedings in the County Division) may be obtained from the Circuit Court of Cook County.

The Official Rules of the Property Tax Appeal Board and appropriate forms for appeals may be obtained from the Property Tax Appeal Board; Suburban North Regional Office Facility; 9511 West Harrison Street, Suite 171; Des Plaines, Illinois 60016. Phone: 847-294-4360.

§ 14-732. Outside Cook County

Since Boards of Review are *ad hoc* organizations, taxpayers seeking assistance are best advised to initially contact the supervisor of assessments for the county in which the property is situated.

§ 14-733. Property Tax Appeal Board

For matters *outside of Cook County*, the Property Tax Appeal Board may be contacted at:

Property Tax Appeal Board
William G. Stratton Office Building
Room 402 - 401 S. Spring Street
Springfield, IL 62706-0002
Phone: 217-782-6076
Web site: www.state.il.us/agency/ptab

For matters *within Cook County*, the Property Tax Appeal Board may be contacted at:

Property Tax Appeal Board
Suburban North Regional Office Facility
9511 West Harrison Street
Suite 171
Des Plaines, Illinois 60016.
Phone: 847-294-4360
Web site: www.state.il.us/agency/ptab

§ 14-734. Department of Revenue

The Office of Assessments of the Department of Revenue may be reached at 217-785-6615.

ABA PROPERTY TAX DESK BOOK

Inquiries concerning exemption status may be directed
to:

Illinois Department of Revenue
Office of Local Governmental Services
ATTN: Exemption Section
101 West Jefferson Street, P.O. Box 19033
Springfield, Illinois 62794-9033

§ 14-800. OTHER [RESERVED]