



# TAX TRENDS

The newsletter of the Illinois State Bar Association's Section on State & Local Taxation

## A note from the co-editors

By Mary Ann Connelly and Stanley R. Kaminski

**H**appy Holidays! As we conclude 2012, 2013 should be an interesting year with the new Illinois Independent Tax Tribunal beginning in July. This edition of *Tax Trends* features an interesting article by David J. Kupiec and Natalie M. Martin about the new Illinois Independent Tax Tribunal. The article gives an overview of the Independent Tax Tribunal and the issues that impact the taxpayer's costs, applicable rules, pri-

vacy issues, appeals, and mediation component. This edition also features an article by Judge Alexander P. White about the 32<sup>th</sup> Annual National Conference of State Tax Judges that was held on September 13, 2012 in San Francisco, California. The conference addressed issues related to property tax valuation, real estate tax exemptions and state income tax, sales taxes and procedures. ■

## Illinois' new independent Tax Tribunal— Implementation legislation enacted as July 1, 2013 start date approaches (Public Act 97-1129)

By David J. Kupiec JD, CPA and Natalie M. Martin JD of Kupiec & Martin, LLC

**O**n August 28, 2012, Governor Quinn signed into law House Bill 5192, which creates the Illinois Independent Tax Tribunal Act of 2012 (Public Act 97-1129). The legislation establishing the Independent Tax Tribunal was passed during the 2011 Veto Session and enacted as Public Act 97-636. By design, Public Act 97-636 established the Tax Tribunal and set the July 1, 2013 start date while requiring the implementation details to be addressed during the next session. Public Act 97-1129 provides the much-needed tax tribunal operational framework, some of which is briefly described below:

### Tax Tribunal Jurisdiction

The new law provides that the Tax Tribunal may exercise its jurisdiction on and after July 1, 2013 and shall have original jurisdiction over the hearing of law and fact arising from certain decisions of the Illinois Department of Revenue with more than \$15,000 of tax at issue. For No-

ties solely asserting either an interest or penalty assessment, or both, the Tax Tribunal shall have jurisdiction where the combined total of all penalties or interest assessed exceeds \$15,000. The Tax Tribunal shall have jurisdiction over all determinations of the Department reflected on a Notice of Deficiency, Notice of Tax Liability, Notice of Claim Denial, and Notice of Penalty Liability issued under: the Illinois Income Tax Act, the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, the Retailers' Occupation Tax Act, the Cigarette Tax Act, the Cigarette Use Tax Act, the Tobacco Products Tax Act of 1995, the Hotel Operators' Occupation Tax Act, the Motor Fuel Tax Law, the Automobile Renting Occupation and Use Tax Act, the Coin-Operated Amusement Device and Redemption Machine Tax Act, the Gas Revenue Tax Act, the Water Company Invested Capital Tax Act, the Telecom-

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## Illinois' new independent Tax Tribunal—Implementation legislation enacted as July 1, 2013 start date approaches (Public Act 97-1129)

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munications Excise Tax, the Telecommunications Infrastructure Maintenance Fee Act, the Public Utilities Revenue Act, the Electricity Excise Tax Law, the Aircraft Use Tax Law, the Watercraft Use Tax Law, the Gas Use Tax Law, or the Uniform Penalty and Interest Act. The Tax Tribunal's jurisdiction does not extend to property tax matters or entity exemption and collection actions.

The Illinois Department of Revenue Office of Administrative Hearings will continue to hear cases with \$15,000 or less at issue. The Department will also continue to handle all entity exemption and all collection actions. Taxpayers will continue to have the option to pay the tax at issue under the Monies Protest Act and file their petition with the Illinois Circuit Court.

### Tax Tribunal Administrative Law Judges

The Governor shall appoint a Chief Administrative Law Judge and up to three additional Administrative Law Judges, with the advice and consent of the Illinois Senate. Judges must be residents of the State of Illinois and licensed to practice law in Illinois for a minimum of eight years. Judges must have substantial knowledge of State tax laws and the making of a record in a tax case suitable for judicial review. Judges will be appointed to four-year staggered terms with the Chief

Judge appointed to a five-year term.

### Taxpayer Costs

No prepayment of tax, penalty or interest is required with Tax Tribunal filings. The Tax Tribunal requires a \$500 filing fee for filing a petition and a bond may be required under certain circumstances.

### Tax Tribunal Representation

Taxpayers may represent themselves before the Tax Tribunal or may be represented by an attorney admitted to practice in Illinois. Pro hac vice admission may be provided for attorneys admitted to practice in other States. The Illinois Department of Revenue will be represented by the Illinois Attorney General.

### Applicable Rules

Supreme Court Rules for discovery apply. Circuit Court rules of evidence and privilege apply.

### Taxpayer Privacy

Taxpayers can petition to remove taxpayer identifying information or confidential information including trade secrets or other intellectual property. The new law also amends the Illinois Freedom of Information Act to provide that taxpayer confidential materials, including tax returns, will not be subject to

public inspection and copying.

### Appeals

Tax Tribunal Decisions can be appealed directly to the Illinois Appellate Court.

### Mediation Component

The Tax Tribunal process provides a mediation option. The parties may jointly petition the Tax Tribunal for mediation at any time before the hearing. The mediation shall be heard by one of the Tax Tribunal Judges not initially assigned to hear the Tax Tribunal case.

As indicated above, the recently passed legislation has set forth the framework for the new Tax Tribunal. However, ongoing issues concerning the Tax Tribunal that must be addressed during the next few months before the July 1, 2013 statutory date include but are not limited to: 1) appointment and confirmation of the Chief Judge; 2) appointment of two to three additional Judges and support staff; 3) establishment of the tax tribunal administrative infrastructure; and 4) promulgation of tax tribunal regulations. The ISBA State and Local Tax Council has established a sub committee to address issues impacting the new Tax Tribunal with an initial focus on the selection of qualified Tax Tribunal Judges. ■

## The 32nd Annual National Conference of State Tax Judges

*By Judge Alexander P. White*

The 32<sup>th</sup> Annual National Conference of State Tax Judges took place at the Mark Hopkins Hotel in San Francisco, California on Thursday, September, 13, through Saturday, September 15, 2012.

Judge Jill Tanner of the Oregon Tax Court, the Conference chairperson, welcomed the attendees and had each of them describe where they were from, their positions, and their duties. This was followed by presentations on recent case and legislative developments, moderated by Judge Tanner, and given by Judge Ellen Hoffman and general counsel Mary Gallagher both of the New York City Tax Appeals Tribunal. Case law pre-

sentations were then given by a number of the attendees on issues relating to property tax valuation, real estate tax exemptions and state income and sales taxes and procedures.

The luncheon speaker was Professor Darien Shanske of the University of California, Hastings College of Law, who discussed theories of state and public finance, including property taxes and debt financing. He examined the fiscal situation in California.

The afternoon program began with a presentation by Justice Brian Morris of the Montana Supreme Court who gave the participants information on resolving conflicts between expert witnesses. He discussed

“What elements appellate courts finds persuasive in assessing the credibility of expert witnesses.” He reviewed:

- The Influence of an appraiser's education, experience, and affiliation with professional organizations on his credibility.
- Whether appraisal experts used by states tend to affiliate more often with different organizations than appraisal experts used by taxpayers.
- Whether the use of unit method of valuation by states necessitates special training for appraisers who work for states.
- The importance of appraiser's demeanor on the witness stand and the impact on

credibility.

- The effect of compliance, or lack of compliance, with uniform or industry standards on appraisers' credibility.
- The thoroughness and selectivity of an appraiser in selecting comparable sales as it affects an appraiser's credibility.
- The motivation of an appraiser: Whether states want its appraisal experts to support high valuations and taxpayers want their appraisal experts to support lower valuations.
- Whether credibility alone changes the outcome of a case on appeal.
- The importance for a trial court to provide a strong supporting analysis for its determination regarding an expert's credibility, or lack of credibility to assist appellate courts to support an outcome.

Moderators were Judge Arnold W. Arnson, who a member of the Tax Section of the Supreme Court of Connecticut and Judge Karen Powell of the Montana State Tax Appeal Board.

The remainder of the afternoon allowed participants to engage in a guided walking tour of Nob Hill or visit local art museums.

The next day, Friday, September 14, 2012, began with a presentation by David Heinowski of Heinowski Appraisal and Consulting, LLC. He gave a review of "Highest and Best Use and obsolescence." The program was moderated by Judge Victoria Enyart of the Michigan Tax Tribunal.

This was followed by an outstanding presentation on legal writing by Ronald Hafer of the National Judicial College. His objective were to have the participants be able to 1) use a common vocabulary of grammatical terms, 2) recognize the kinds of sentence structures they themselves tend to use, to 3) better edit their own writing by using the editing guide, 4) understand what we do when we read and 5) understand why the psychology of reading is important to writers. The moderator was Judge Martha Wentworth of the Indiana Tax Court.

The luncheon speaker was David Brunori of tax analysts who reviewed state legislative enactments and their impact on the economy.

This was followed by a timely report on "Foreclosure and Distressed Property Sales" by Thomas A. Jaconetty, Deputy Assessor of the office of the Cook County Assessor. He revisited the continuing chaotic and frenzied marketplace to update the foreclosure epidemic with an eye toward the states

those essential entities in our federal system – seeking first to describe the problems that they face and then to investigate their problems solving techniques. Second what the states have done is sometimes disappointing but more often exemplary and finally, to administrative and judicial responses to this overriding question: How do we apply our commonly-accepted principles and theoretical framework to confront the ongoing formidable challenge of a depressed economy and a national real estate market still laboring under severe stress? The moderator was Chief Judge George Perez of the Minnesota Tax Court.

Professor Daphne A. Kenyon of the Lincoln Institute of Land Policy gave a report on "Rethinking Property Tax Incentives for Business: Analysis and Proposals for Reform" The moderator was Judge Tanner.

The final session of the afternoon consisted of a panel consisting of Judge Gail Menyvk of the Tax Court of New Jersey, Judge Martha Wentworth and Glenn Newman of the New York City Tax Commission and Tax Appeal Tribunal. They discussed how to work with pro se or self represented litigants and what works and what does not work.

A reception that evening was followed by a banquet and the presentation of awards. The presentation of the Lawrence L. Lasser Tax Judge of the Year Award was given to Judge Henry Breithaupt of the Oregon Tax Court.

The Saturday morning program, which was moderated by Glen Newman of the New York City Tax Commission and Tax Appeals Tribunal and Judge Breithaupt, was devoted to state and federal constitutional and statutory tax decisions and the implications of recent state tax decisions on state and local government. Presentations were made by Professor Richards Pomp of the University of Connecticut and Professor Kirk Stark of the University of California.

Many specialized tax tribunals have only a small number of members, and sometimes only a single judge. The National Conference of State Tax Judges provides the sole forum in which those who adjudicate state and local tax cases can confer with colleagues from other states and learn from their experiences. The Lincoln Institute was instrumental in developing the conference and has supported it since its inception.

The attendees were unanimous in their praise of the Conference and are looking forward to the 33rd Annual Conference, at Harvard University in September of 2013. ■

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*Published at least four times per year.*

*Annual subscription rate for ISBA members: \$20.*

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**TAX TRENDS**  
ILLINOIS BAR CENTER  
SPRINGFIELD, ILLINOIS 62701-1779  
DECEMBER 2012  
VOL. 56 NO. 6