Willson & Pechacek, P.L.C. Newsletter

Assessors Special Issue | **January 2018**

Year in Review

by Jamie Cox

In 2017, the Iowa Supreme Court and Court of Appeals did not decide any property tax assessment appeals. The Iowa Property Assessment Appeal Board ("PAAB") decided 121 appeals, down from 202 the year before. Most significantly in 2017, however, the Iowa Legislature amended the property tax assessment statute in ways that fundamentally affect how taxpayer protests and appeals are handled by all Assessors and Boards of Review. This article focuses on several of the key changes signed into law by the Governor on May 11, 2017.

Removal of Assessor. Iowa Code §441.9 now defines "misconduct" for which an Assessor may be removed from office by a majority vote of the conference board as "knowingly engaging in assessment methods, practices, or conduct that contravene any applicable law, administrative rule, or order of any court or other governmental authority." This definition is troublesome in that it is overly broad and could lead dissatisfied taxpayers to allege that Assessors must be removed for misconduct because their properties are valued too high. Effective date: May 11, 2017. Result: disadvantage Assessors.

Taxpayer Financial Information. Iowa Code §441.21(2) now provides, in relevant part, that "the assessor shall not take into consideration and shall not request from any person sales or receipts data, expense data, balance sheets, bank account information, or other data related to the financial condition of a business operating in whole or in part on the property if the property is both classified as commercial or industrial property and owned and used by the owner of the business." It has long been the law that if the comparable sales approach cannot be used, then Assessors are allowed to use "other approaches" such as the cost approach and the income approach. However, now Assessors are prohibited from using information such as expenses, which would include normal operating expenses such as utilities, insurance, management fees, repairs and maintenance, etc. if operated by the owner of the property. This information may still be requested from a tenant-operator. On appeal, this type of information is routinely requested in discovery and for the income approach in appraisals. Time will tell if owner-operator taxpayers attempt to use this new language to hide such expense information on appeal. Effective date: January 1, 2018. Result: advantage taxpayers.

Burden of Proof. Iowa Code §441.21(3)(b) now provides that "for assessment years beginning on or after January 1, 2018, the burden of proof shall be upon any complainant attacking such valuation as excessive, inadequate, inequitable, or capricious. However, in protest or appeal proceedings when the complainant offers competent evidence that the market value of the property is different than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed." This is a drastic change from past practice when the burden of proof was on the taxpayer until the taxpayer offered competent evidence by at

(continued on page 2)

(continued from page 1)

least two disinterested witnesses. Now, the taxpayer can shift the burden of proof with one witness, even an interested one. Effective date: May 11, 2017. Result: advantage taxpayers.

Grounds of Protest. Iowa Code §441.37(1) is amended in several important ways. First and foremost, the statute no longer distinguishes between grounds of protest allowed in odd-numbered assessment years (i.e., 2017) versus even numbered interim years (i.e., 2018). Now, it appears that only the following grounds of protest are allowed, regardless of the year: inequity; over-assessed; not assessable, exempt or misclassified; error; and fraud or misconduct. The ground of protest for a downward change in value, which used to be allowed in odd-numbered years, has been deleted from Iowa Code §441.37 (2). With respect to the ground that the assessment is not equitable, a taxpayer no longer has to list the legal descriptions and assessments of comparable properties on the protest form. For an over-assessment claim, the taxpayer no longer has to state the specific amount believed to be over-assessed and the amount considered to be its actual value. With a non-assessable, exempt, and misclassified claim, the taxpayer does not have to state the reasons for the protest. For an error claim, the taxpayer does not have to state the specific alleged error. Finally, for a fraud or misconduct claim, misconduct is defined in Iowa Code §441.9 and, if fraud or misconduct is found, then the taxpayer's legal fees, appraisal fees, witness fees, etc. are paid from the assessment expense fund under Iowa Code §441.16. These are major changes that will impact all future protests. Effective date: January 1, 2018. Result: advantage taxpayers.

Appeal to PAAB. Iowa Code §441.37A(1)(b) now provides that "[f]or an appeal to the [PAAB] … [n]ew grounds in addition to those set out in the protest to the local board of review, as set out in section 441.37, may be pleaded …". This is a 180-degree sweeping change from the prior statute where no new grounds could be alleged on appeal to PAAB. In essence, taxpayers now have two chances to test out grounds of protest—a test run at the local board of review and, if those grounds fail, then new grounds at PAAB. Effective date: January 1, 2018. Advantage taxpayers.

Refund or Credit of Overpaid Taxes. Iowa Code §441.37A(3)(c) now provides that if PAAB reduces the assessed value then the taxes overpaid must be refunded or credited to the taxpayer, at the taxpayer's option. This new provision is limited to PAAB decisions; there is no similar provision for court decisions. The Iowa Supreme Court has held that a refund is not available because a court may only raise, lower, or affirm the assessed value, and does not have the authority to award a money judgment to a taxpayer who successfully protests the assessment. *Homeowner's Loan Corp. v. Polk County*, 1 N.W.2d 742 (Iowa 1942). It will be interesting to see if refunds and credits are handled differently in PAAB and court appeals. Effective date: January 1, 2018. Advantage taxpayers.

Appeal to District Court from Board of Review. Iowa Code §441.38(1) now provides that "[f]or appeals taken from the local board of review directly to district court, new grounds in addition to those set out in the protest to the local board of review, as provided in section 441.37, may be pleaded." Again, this is the complete opposite of the prior statute where no new grounds could be alleged on appeal to district court. As with an appeal to PAAB, taxpayers get two chances to test out grounds of protest. Effective date: January 1, 2018. Advantage taxpayers.

(continued on page 3)

Alternative Tests for Proving Inequitable Assessment Claims

by Jamie Cox

In *Polk County Board of Review v. Property Assessment Appeal Board*, Case No. CVCV053275, the Polk County District Court ("PCDC") had to decide what is the proper standard for proving an inequitable assessment claim. On the one hand, PAAB argued that inequity can be proven by either or both of two methods:

> (1) by proving the Assessor used different assessing methodologies that resulted in an inequitable value when assessing the subject property as compared to assessing other similar properties (i.e., the *Eagle Food* test; see *Eagle Food Centers, Inc. v. Board of Review of the City of Davenport, Scott County*, 497 N.W.2d 860 (Iowa 1993)); and/or
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> (2) by proving the following six factors: (a) several properties are similar and comparable to the subject property; (b) the assessments of those properties; (c) the actual value of those properties; (d) the actual value of the subject property; (e) the assessed value of the subject property; and (f) the subject property is assessed at a higher proportion of its actual value than the other properties (i.e., the *Maxwell* test; see *Maxwell v. Shivers*, 133 N.W.2d 709 (Iowa 1965).

The Board of Review, on the other hand, argued that the *Eagle Food* test is only an alternative to the *Maxwell* test in cases in which the taxpayer can prove that the assessment is arbitrary, inaccurate, and the assessment methodology is improper. In all other cases, the *Maxwell* test is the only test.

The PCDC ultimately agreed with PAAB, finding that the Board of Review's position was too narrow. The PCDC decision was appealed by the Board of Review, but later voluntarily dismissed.

Until such time as the statute is changed or an Iowa appellate court rules differently, PAAB will continue to allow taxpayers to prove their inequitable assessment claims by either or both methods. The PCDC decision, while not binding on other district courts, may be persuasive to other district courts. Therefore, even in non-PAAB appeals in counties other than Polk County, Boards of Review should be prepared for the use of the alternative standards method. It may be advantageous to use one method over the other in a particular appeal. Assessors and Boards of Review should be sure to contact their legal counsel with any questions about the proper standard to use in their particular appeals.

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Notice of Assessment Protests and Appeals to Taxing Districts. Iowa Code §441.39(1) now provides that if a taxpayer requests an adjustment in value of at least $100,000, the Assessor must notify all affected taxing districts as shown on the last available tax list. In some situations, this could put added pressure on the Assessor, but typically it may not be a concern. Effective date: January 1, 2018. Advantage: Neither.

Notice of Voluntary Settlement. Iowa Code §441.39 now provides that the PAAB may adopt rules establishing requirements for notices of voluntary settlements in appeals to be served upon affected taxing districts. This may not be a concern, but it is something to remember when settling a PAAB appeal. Effective date: January 1, 2018. Advantage: Neither.

In summary, 2017 brought drastic changes to the law governing assessments, protests and appeals, the majority of which favor taxpayers. Assessors and Boards of Review should contact their legal counsel to further discuss the impact these amendments may have on future cases. We recommend a special Board of Review beginning session to discuss these multiple changes.

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Memoranda from Iowa Department of Revenue and Iowa Department of Justice

by Jamie Cox

From time to time, the Iowa Department of Revenue ("DOR") and the Department of Justice ("DOJ") issue memoranda that provide guidance and instructions to Assessors.

On April 26, 2017, the DOR published a memorandum on the proper way to determine whether property should be classified as agricultural. The DOR apparently determined that some Assessors are using handbooks or manuals that do not comply with the law in many respects. Importantly, the DOR suggests that Assessors who continue to classify property in an erroneous manner could be found to have committed "misconduct" as defined in the new Iowa Code §441.9, which provides that an Assessor may be removed from office for knowingly engaging in assessment methods, practices, or conduct that contravene any applicable law, administrative rule, or order of any court or other governmental authority.

On June 20, 2017, the DOJ issued a memorandum on the question of whether Assessors can adjust the valuation of a subset of properties within a class in an even numbered interim year (i.e., 2018). The DOJ writes that if the value of a subset of properties was below fair market as assessed in an odd-numbered assessment year (i.e., 2017), then Assessors are obligated to uniformly adjust that subset by making an interim assessment to ensure equality and that all properties are being assessed at actual or fair market value.

Assessors should be sure to contact their legal counsel with any questions about these memoranda and how they apply to their assessments.