IPTI Xtracts

Property Tax and Assessment News from Around the World

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Where Have State And Local Government Taxes And Fees Increased The Most Over The Decade?

Every year, the U.S. Census Bureau publishes estimates on state and local revenue and spending. The most recent estimate is for 2017. The top five states in per capita state and local revenue collection, including federal transfer payments to state and local government (mostly Medicaid) are New York, Alaska, Wyoming, California, and Hawaii.

In the case of Alaska and Wyoming—both energy-rich but sparsely populated states—collect significant revenue by taxing energy commodities. New York, California, Hawaii, on the other hand, are high cost of living states with high taxes.

But where have taxes increased the most over the past 10 years, from 2007, on the eve of the last recession, to 2017? After accounting for population growth, growth in government revenue can be looked in three general categories: the percentage change in state and local revenue, excluding federal funds; the percentage change in a state's own revenue, and the percent change in local government's own revenue.

Examining the data this way produces some interesting results. The top five states for increased inflation-adjusted per capita government revenue at the state and local level, excluding federal funds are Iowa, North Dakota, Hawaii, Oregon, and Maryland. North Dakota's huge boom in revenue can be explained by the oil shale fracking revolution that took place there in recent years while Maryland likely benefited from the continued expansion of high-paying federal jobs tied to Washington, D.C.

At the other end of the scale, Alaska, Florida, Louisiana, Wyoming, and Arizona saw the greatest drop in state and local revenue. Alaska, Louisiana and Wyoming can largely be explained by the changing fortune in the energy markets, upon which they rely heavily for excise taxes.

Among the 10 most-populous states with diversified economies, highlighted in bold in the table below, the expected big-government-loving states increased revenue by the greatest pace, with New York, Illinois, and California leading the way with the largest boost in per capita state and local revenues. Texas saw per capita state and local revenue increase 2% over the 10 years, fifth out of the 10 big states. Florida experienced the largest decline in state collections, 16%, as the legislature has reduced taxes every session since 2010.

Per capita state and local revenue, as adjusted for inflation, increased in most states.

State-only revenues went up the most in California, Illinois, and Michigan among the ten most-populous states. Texas state-only per capita revenue was flat, at 0%, from 2007 to 2017. Florida's state-only revenue declined 14%.

Local government revenue changed over the decade showed some surprising results. Mostly based on property taxes, though in New York's case, New York City has several unique local taxes (including an income tax), local governments tend to have a lot of flexibility in raising revenue. California is one exception, with Proposition 13, passed in 1978—and up on the ballot to be partially dismantled this year—caps property taxes at 1% of the sales price of the property with appraised values rising no more than 2% per year. New York is again No. 1 in increased revenue, followed by Illinois, North Carolina, and Texas.

COVID-19 Impact on Commercial Property Taxes – The Bad, the Good and the Ugly

The Bad

The COVID-19 pandemic has created a time of great uncertainty that has intensified pre-existing political and economic uncertainties, and has severely disrupted commercial real estate operations, ideally for the short-term. Focusing solely on the shape and timing of an economic recovery, the impact of the pandemic on the valuations of commercial real estate is difficult to quantify today.

A key question being asked by many commercial owners is how will the pandemic impact property taxes going forward? What can I do? Will assessors grant reductions in assessments due to the pandemic?

What we do know is federal, state and local governments will be experiencing massive budget deficits in 2020 and 2021. The need for revenue from all sources will be at an all-time high while property taxes are the most stable and greatest funding sources of local revenue.

Simplified, increases in government spending combined with a reduced tax base equal increases in property tax rates. A tax rate increase that exceeds any value reduction, means paying more in property taxes.

The Good

Most commercial property owners should expect a value reduction to occur beginning with their 2021 assessments. The key question is how much of a reduction should be expected and what should the taxpayer do to obtain an assessment that is reflective of post-pandemic markets?

Intensified coordination between ownership's leasing, asset management and property tax professionals will be critical to equitable post-pandemic valuations. Property income and expense statements/rent rolls are one-dimensional data, and without an active narrative to make them 3D, value reductions opportunities will be lost.

Examples of useful, real-time data include:

Hotels

- Monthly ADR and occupancy stats demonstrating the impact of the pandemic
- Providing reduced group booking and transient occupancy schedules as compared to prior years
- Comparable property sales
- Commercial mortgage-backed securities (CMBS) nuances
- Destination resorts, business travel dependent hotels and conference centers face magnified losses.

Retail

- Tenant bankruptcies
- Store closing
- Vacancies
- Delinquent/abated rent collections
- Co-tenancy clauses
- Anticipated vacancies
- Asking rents/incentives for vacant space
- Tenant sales
- COVID-19 capital costs
- Obsolescence
- Comparable property sales
- CMBS nuances

Retail occupancy faces greater headwinds than just online sales. Record tenant insolvencies, requests for single year leases paying gross or percentage rents, tenants abandoning spaces, rethinking community destinations, and many centers facing survival thresholds magnified by debt obligations.

Office

- Up-to-date vacancies
- Delinquent rent collections
- Anticipated vacancies
- Asking rent for vacant or sublease space
- COVID-19 capital costs
- Comparable property sales
- CMBS nuances

New COVID-19 spacing requirements (offices/elevators), work at home options, commuting options, decentralizing trends, workforces leaving congested areas, increases in sublease spaces, fallen demand and lease deal velocity.

Capitalization Rates/Sale Transactions: Real-time market events will be critical to establish market parameters for valuation setting. Producing/packaging information by experts will be the most persuasive evidence for equitable market value.

The Ugly

Even if an owner compiles a compelling valuation argument and is successful in achieving a valuation reduction, it does not mean their property taxes will be reduced commensurately. In projecting property taxes for tax year 2021, the key considerations to keep in mind are as follows:

- Assume voters get any relief/reductions firsts. Commercial will continue to carry a disproportional load of the tax burden.
- Jurisdictions that follow non-annual valuation cycles may not permit appeals until the next schedule revaluation. What is your local practice?
- COVID-19 reductions in 2020 will, in most jurisdictions, not occur because of the valuation date of January 1, 2020. Some states use other valuation dates. When are your values set or taxes paid?
- Jurisdictional budget deficits will likely result in property tax rates increasing in 2020 and 2021. This will be driven by jurisdictional COVID-19 expenses and lost variable revenue sources, including state contributions, sales tax, transfer taxes and the cost to retro fit schools. Are your local teams monitoring the local rate setting processes?
- Expect resistance/reluctance by jurisdictions to grant reductions unless long-term trends can be established by ownership. That includes income (actual and pro-forma), and comparable sales. Does your representative have access to this information, and can they package it?
- Property taxes will likely increase in most jurisdictions unless a reduction in assessed value is greater than the property tax rate increase. Across the board discounts of 10% on all real estate values only increases the tax rate by an equal amount.
- Owners need to put their best valuation case forward to minimize their property taxes in 2021 and beyond. Superior documentation and aggressive presentations will be required. Historical relationships will count for less. Do you have the right team?
- The volume of future appeals will overload the appeal forums. Expect extended resolution timelines and monitoring. Do you have this reporting system in place?

Every commercial property is unique, but these strategies will assist owner's in making the best of a bad situation.

What Should We Do with 45,000 Half-Empty Public Buildings?

Could underutilized government offices, empty parking lots, or shuttered public schools help solve your community's shortage of affordable housing or senior care facilities? Research suggests that it's entirely possible. The U.S. government alone owns an estimated 45,000 underused or underutilized buildings, plus abundant surplus land. And, as a result of the current pandemic, organizations across the public and private sectors are now recognizing that many of us don't really need to be in the office every day to get our work done. This underutilized space and property represents enormous untapped value which could be leveraged to finance investments in other areas.

Take the challenge of affordable housing. Today, nearly 40 million Americans cannot afford their current homes – spending as much as half of their incomes on housing. It's estimated that as many as 7.2 million new affordable housing units are needed to meet demand. What if the public sector could leverage assets they already have to help bridge that gap?

In Canada, various governments have already done just that. By selling more than 240 surplus properties valued at some $120 million, the province of Ontario was able to save almost $10 million in annual operating costs. Some of those properties are now being repurposed for low-income and senior housing. Similarly, the city of Toronto launched an initiative to repurpose 18 city-owned properties into almost 13,000 affordable housing units.

What can we learn from these successes? There are several steps that policymakers and public sector officials — along with multidisciplinary teams of finance, human resources, technology, and corporate real estate stakeholders — should take in order to begin leveraging the untapped potential of unused buildings and property.

1. Analyze current and future requirements.

Examine how buildings are being used today and determine occupancy requirements. Consider what will be needed to support existing programs and operations, anticipated future employees and work styles, and anticipated future business needs stemming from digitization, flexible work arrangements, or alternate service delivery methods.

For example, if people are offsite inspecting locations or meeting with clients daily (i.e., property inspectors, community nurses, municipal planners), do they really need a dedicated workplace? Similarly, if customers can access license applications or other services online, are multiple customer care locations required? This analysis makes it possible to more effectively match business requirements with available real estate.

2. Rethink your assumptions.

Of course, properties of historic or cultural value should generally continue to be held by the public sector, but challenge traditional assumptions around individual entitlements and legacy properties to identify gaps and better understand long-term space requirements and opportunities. Is that empty parking lot really helping anyone? How about that mostly unused office space for contract workers? Do leaders really need large private offices, some with showers?

3. Identify surplus properties.

Identify underpopulated, obsolete, or no longer desired properties that can be repurposed, if owned, or consolidated, if leased. Entities can unlock capital value from their owned properties by borrowing against equity that has built up over time, or they can consolidate leases and move to a centralized location, reducing their footprint and operating costs. For example, officials in Kansas City found that their unused school buildings could be worth up to $15 million if sold or otherwise repurposed — a welcome source of revenue for districts facing shrinking budgets.

4. Segment surplus properties

Segment the properties into tranches by market value, geography, and occupant requirements. Sometimes groups of lower-value or geographically diverse properties can be combined with higher-value properties to enable a swift transaction.

5. Determine the property's potential value

Understand each property's future use potential and "land value capture," or increases in land value resulting from public investment or other government action which communities can recover and reinvest. These transactions can facilitate a public-private partnership to create new infrastructure or other assets. For example, the province of Ontario recently sold a prime downtown Toronto property to a developer, who incorporated that property into a larger project that includes a day care and 700 rental housing units (including 200 affordable units). Alternatively, assets can be sold and the funds applied toward modernizing government operations through investment into updated technologies, processes, and service delivery tools.

6. Develop a transition strategy

These transformations will take place over many years, depending on the size of the organization and current real estate commitments. A multidisciplinary team will need to determine what will be needed, including people, processes, technology, and budget, to release property and transition to the new model.

7. Communicate the transformation process

Articulating clear goals will help organizations engage the right expertise, evaluate interested parties, and decide what role central agencies will play in working with developers or investors.

There is no denying our pandemic experience will result in changes to the way we all live and work. Some of those changes will be an acceleration of trends that were already underway long before any of us had even heard of Covid-19. Others will be new adaptations. But what if a silver lining of this crisis is the opportunity for governments to unlock public resources, redistribute investments, and optimize space to meet community needs? As we all face unprecedented uncertainty, this is one change that would be most welcome.

Hotels Should Start Preparing Now for Property Tax Appeals

As hotels and other hospitality businesses suffer from the COVID-19 lockdown, it's important that they move quickly and proactively to lower their property taxes. In many states they'll be able to lower the amount they owe as a matter of law; in the others, it's a matter of common sense.

The pandemic and subsequent lockdown has emptied hotels, commonly dropping occupancy from 80-90% to record lows and forcing widespread, temporary closures in cities like Chicago and New York. Even as hotels begin to reopen, the remainder of 2020 looks grim: they'll get little if any revenue from corporate events, weddings and the like – and a resurgence of the virus across the country will likely put a damper on already-sluggish business and leisure travel.

The resulting loss of operating income gives hotel owners and operators a strong argument for lower property-tax valuations. In appealing their assessments, hotels should be prepared to demonstrate how the pandemic has directly impacted their business income.

In some states, financial statements should be sufficient to lower hotels' tax bills. California, for example, requires assessors to consider diminutions in value caused by "calamity," including pandemics. A handful of other states have similar provisions. And while most, including Illinois, don't specifically list pandemics, it's not a stretch to argue that COVID-19's impact was just as damaging to the business's value as a tornado or flood.

In most states, the law is silent on the impact of calamities. For businesses in those jurisdictions, the argument will be based on common sense – backed by clear, convincing financial data. By almost any valuation method, including the Rushmore Approach, the losses wrought by COVID-19 will cause severe, demonstrable impairment of asset value.

Owners and operators should immediately start marshaling the necessary financial data in anticipation of filing appeals, regardless of when they expect to receive property tax bills.

Even though the case for lowering hotels' assessments may seem unassailable, assessors likely won't accept it without a conversation. The pandemic has also done significant damage to state and local government revenues, so assessors everywhere will be fighting for every cent.

Still, in most jurisdictions, this won't mean abandoning common sense. Hotels that show a clear link between the COVID-19 lockdown, their operating income and property value, should have little trouble arguing the fairness of lower assessments.

LendingTree Study Ranks the Most Valuable Cities in America

Real estate wealth is not evenly distributed across the country and is largely concentrated in large cities. But it begs the question: What are the most valuable cities in America? To find out, LendingTree analyzed the total value of residential real estate in American cities. The real estate values come from the My LendingTree property value database, which is a collection of real estate data of more than 155 million U.S. properties. The total value of residential real estate in the database was $32.6 trillion, close to the Federal Reserve's estimate of total residential real estate value of $32.9 trillion.

Key findings:

- **New York has the most valuable real estate in the U.S. at $2.8 trillion —** slightly more than the entire GDP of the United Kingdom for 2019. In fact, this is greater than the GDP of all but just five countries — India, Germany, Japan, China and the United States. The value of New York is comparable to the combined market value of tech giants Apple and Microsoft.
- **Los Angeles is second at $2.3 trillion,** close to the GDP of Italy and the combined value of Amazon and Alphabet (the parent company of Google).
- **San Francisco is third at $1.3 trillion**, approximately the same as Mexico's GDP and the value of Microsoft.
- **These three markets are the only cities above $1 trillion, and value falls rapidly from there.** Cities after 15th-ranked Riverside, Calif., are all valued under $500 billion and under $200 billion after 29th-ranked St. Louis.
- **The Federal Reserve values total residential real estate owned by households at $32.9 trillion**. LendingTree found that the top 10 cities account for nearly 36% of that value. The top 50 add up to about 66% (or two-thirds) of the total.
- **Our top 50 is rounded out by New Orleans, Naples, Fla. and Salt Lake City,** with real estate values comparable to the GDPs of Ecuador for New Orleans and Slovakia for Naples and Salt Lake City. Their company equivalents are General Electric, Starbucks and Qualcomm.

Although LendingTree's list shows the top 50 cities, the value of every metro area in the U.S. was calculated. **The least valuable metro was Battle Creek, Mich., with real estate valued at $989 million.**

Rank	City	Total Value (in billions)	Median Value	Closest Company Equivalent	Closest Country Equivalent
1	New York	$2,838	$501,000	Apple Inc + Microsoft Corp	United Kingdom
2	Los Angeles	$2,289	$668,000	Amazon.com Inc + Alphabet Inc	Italy
3	San Francisco	$1,320	$959,000	Microsoft Corp	Mexico

4	Chicago	$906	$245,000	Alphabet Inc	Netherlands
5	Washington, D.C.	$826	$455,000	Alphabet Inc	Saudi Arabia
6	Boston	$815	$498,000	Alphabet Inc	Saudi Arabia
7	Miami	$774	$297,000	Facebook Inc	Saudi Arabia
8	Seattle	$700	$498,000	Facebook Inc	Switzerland
9	Dallas	$628	$243,000	Facebook Inc	Taiwan
10	Philadelphia	$577	$246,000	Facebook Inc	Taiwan
11	San Jose, Calif.	$568	$1,100,000	Berkshire Hathaway Inc	Poland
12	San Diego	$564	$594,000	Berkshire Hathaway Inc	Poland
13	Houston	$535	$211,000	Berkshire Hathaway Inc	Thailand
14	Atlanta	$531	$227,000	Berkshire Hathaway Inc	Thailand
15	Riverside, Calif.	$485	$365,000	JPMorgan Chase & Co	Iran
16	Phoenix	$484	$276,000	JPMorgan Chase & Co	Iran
17	Denver	$439	$430,000	JPMorgan Chase & Co	Argentina
18	Minneapolis	$383	$294,000	Johnson & Johnson	Ireland
19	Detroit	$348	$172,000	Mastercard Inc	Denmark
20	Portland, Ore.	$319	$401,000	Walmart Inc	Bangladesh
21	Sacramento, Calif.	$318	$410,000	Procter & Gamble Co/The	Bangladesh
22	Baltimore	$301	$284,000	Bank of America Corp	Egypt
23	Tampa, Fla.	$286	$216,000	Intel Corp	Pakistan
24	Austin, Texas	$248	$323,000	Coca-Cola Co/The	Czech Republic
25	Charlotte, N.C	$248	$223,000	Coca-Cola Co/The	Czech Republic
26	Orlando, Fla.	$233	$245,000	Merck & Co Inc	Portugal
27	Honolulu	$219	$705,000	Merck & Co Inc	Greece
28	Nashville, Tenn.	$209	$265,000	Pfizer Inc	New Zealand
29	St. Louis	$202	$162,000	Chevron Corp	New Zealand
30	Las Vegas	$191	$278,000	Wells Fargo & Co	Qatar
31	San Antonio	$187	$206,000	Boeing Co/The	Qatar
32	Providence, R.I.	$179	$300,000	Boeing Co/The	Algeria
33	Pittsburgh	$172	$163,000	Oracle Corp	Algeria
34	Cincinnati	$167	$179,000	salesforce.com Inc	Kazakhstan
35	Kansas City, Mo.	$164	$195,000	Netflix Inc	Kazakhstan
36	Columbus, Ohio	$163	$207,000	Netflix Inc	Kazakhstan
37	Bridgeport, Conn.	$159	$410,000	NIKE Inc	Ukraine
38	Virginia Beach, Va.	$155	$238,000	Abbott Laboratories	Ukraine
39	Oxnard, Calif.	$148	$586,000	Bristol-Myers Squibb Co	Ukraine
40	Jacksonville, Fla.	$145	$213,000	PayPal Holdings Inc	Ukraine
41	Cleveland	$141	$151,000	PayPal Holdings Inc	Kuwait
42	North Port, Fla.	$134	$244,000	Costco Wholesale Corp	Kuwait
43	Milwaukee	$131	$238,000	Amgen Inc	Kuwait
44	Cape Coral, Fla.	$128	$218,000	Charter Communications Inc	Morocco
45	Raleigh, N.C.	$127	$271,000	Union Pacific Corp	Morocco
46	Richmond, Va.	$124	$240,000	Broadcom Inc	Morocco

47	Indianapolis	$122	$148,000	Lockheed Martin Corp	Morocco
48	New Orleans	$110	$201,000	General Electric Co	Ecuador
49	Naples, Fla.	$104	$329,000	Starbucks Corp	Slovak Republic
50	Salt Lake City	$103	$312,000	QUALCOMM Inc	Slovak Republic

ARIZONA

We need a county assessor who'll call out those who raise our property tax bills

TAX POLICIES: Arizona ranked 21st overall for its tax policies in a 2016 annual report by the Tax Foundation. Arizona was also ranked on individual policies, including property taxes (No. 6) and sales taxes (No. 47).

Every year the check you write to pay your property taxes gets higher. That's because elected officials take advantage of the fact that when property values rise, even with the tax rate staying the same, local government takes more and more of your money.

Taxpayers deserve a county assessor who will put them first by fighting for low taxes.

Unlike our household budgets where we must live within our means, government doesn't have to. The folks in charge of spending your tax dollars, who run our county, our cities and even our community college districts, decide how much of your money they want to spend and work backwards.

Property value is only one part of tax puzzle

Here's how property taxes in Maricopa County are set — each February, the county assessor's office sends out 1.8 million postcards with the tax value of your property. Six months later, in the middle of summer, the elected governing bodies (community college district, city councils, school boards) get together and approve their budgets.

Each government entity then divides their budget by the total assessed values of all the properties in their jurisdiction, and approves the rate that will generate how much they want to spend. If the county assessor's only job was to mail out postcards, Arizona's founders would not have made it a constitutionally elected office.

In the real world, we all have rich years and lean years. And in the tough years, we cut back by doing more with less. The same should be true for government. As a practicing attorney, real estate broker with over 20 years of experience in homebuilding and commercial real estate, and major serving in the United States Air Force JAG Corps Reserve, I have the experience and integrity to demand accountability when it comes to your taxes.

You face higher bills even with flat tax rate

Here in Maricopa County our elected officials play a game. They exploit increasing property values, combined with flat tax rates, to hide how they generate more cash and tax higher bills every year. They annually pat themselves on the backs for "not raising rates," yet every October, when your tax bill arrives you end up paying more!

Consistent with shell games of years past, this June the Maricopa County Board of Supervisors proposed a tax increase so large that it triggered a state-mandated public hearing. Their handpicked, appointed county assessor, Eddie Cook, could have stood with the taxpayer and demanded that they lower the tax rate to prevent a tax increase. He said nothing.

As assessor I know my duty will be more than just mailing out postcards. I will always hold elected officials accountable if they try and hide tax increases inside of fuzzy math problems.

In these trying economic times, taxpayers cannot afford a rubber-stamp assessor who serves only the elected officials who appointed him. The establishment's approach of secret tax increases that take more money out of your pocket without transparency must stop.

New Guidance Regarding the Property Tax Implications of the Occasional Commercial Use of a School-Owned Facility

In general, school-owned land, facilities and buildings used for education and libraries are exempt from Arizona real property taxes so long as such areas are not used or held for profit. The question asked often was whether tax exemption would cease to apply if such facilities were occasionally used for commercial use. This was a difficult question to answer because it was unclear whether even the smallest amount of commercial use of the educational facilities would negate any tax exemption otherwise available.

On June 15, 2020, the Arizona Attorney General's Office issued Opinion No. I20-009 stating that the occasional commercial use of a school-owned facility does not necessarily constitute being "used or held for profit" and therefore does not necessarily disqualify the facility from receiving the full property tax exemption for education and library property provided by Arizona Revised Statute ("A.R.S.") § 42–11104 (A). The Opinion further cautioned, however, that "more than occasional commercial use could constitute being 'used or held for profit.'"

Article 9, § 2 of the Arizona Constitution permits, but does not require, the Legislature to exempt from taxation the property of "educational, charitable, and religious associations or institutions not used or held for profit." The Legislature has implemented this constitutional provision for educational properties in A.R.S. § 42-11104.

A.R.S. § 42–11104 (A) provides that "[l]ibraries, colleges, school buildings and other buildings that are used for education, with their furniture, libraries and equipment and the land that is appurtenant to and used with them, are exempt from taxation if they are used for education and not used or held for profit."

While no Arizona cases address whether commercial use of a school-owned facility constitutes being "used or held for profit" and, therefore, disqualifying the facility from the full A.R.S. § 42-11104 (A) property tax exemption, the Opinion cited several Attorney General Opinions and the applicable statutes relating to the leasing of school property and use of the proceeds thereof in support of the proposition that it is legally permissible for school districts to lease school property to commercial users while still satisfying the "not used or held for profit" requirement in A.R.S. § 42-11104 (A).

The Opinion further relied on the case Tucson Botanical Gardens, Inc. v. Pima County, 218 Ariz. 523, 189 P. 3d 1096 (App. 2008), which analyzed, in part, whether a property was "not used or held for profit" under a similarly worded property tax exemption statute, A.R.S. § 42-11116. That statute provides an exemption for the property of, among others, botanical gardens that are qualified as non-profit charitable organizations under I.R.C. § 501(C)(3) if the property was “not used or held for profit.”

The County Assessor had denied the exemption for parts of the garden, including a gift shop that sold non-educational items (ie., t-shirts, stationary, etc.) and meeting rooms that were rented occasionally to third parties for non-charitable purposes (ie., weddings, private parties and meetings) as well as occasionally exhibiting art for sale from which the garden received a commission. With respect to whether the sale of non-educational goods in the gift shop and renting out the meeting rooms from time to time might cause those properties to be considered “used or held for profit,” the court noted that the garden did not realize a profit from either the gift shop or renting out the meeting rooms and it rejected the Assessor’s argument that that income disqualified those spaces from receiving an exemption.

In short, the court held that when a nonprofit organization is the primary user of a property it owns, but allows occasional use of its property for non-exempt purposes, the property does not lose its tax-exempt status for being “used or held for profit,” so long as the organization’s nonprofit status under A.R.S. § 42-11154 is proved and all other requirements of the tax exemption statute are met.

Accordingly, the Opinion concluded that occasional commercial use of a school-owned facility does not necessarily constitute being “used or held for profit” and, therefore, does not necessarily disqualify the facility from receiving a full exemption under A.R.S. § 42-11104(A), although the facts of any particular case will drive the outcome in any particular instance and more than occasional commercial use could constitute being “used or held for profit.”

CALIFORNIA

California Court of Appeal Decision May Result in Big Tax Savings for Some Commercial Property Owners

In a decision that could save some commercial property owners hundreds of thousands of dollars in taxes, the Court of Appeal for the First Appellate District of California held in 731 Market Street Owner, LLC v. City and County of San Francisco (Cal. Ct. App., June 18, 2020, No. A154369) that the City and County of San Francisco cannot impose a documentary transfer tax on the value of an assigned landlord-interest in a lease when the lease has a remaining term of at least 35 years. The 35-year cutoff considers both the remaining initial term of the lease and unused extension options.

In 2011, 731 Market Street Owner, LLC (“731 Owner”) and CVS Pharmacy (“CVS”) entered into a lease for space in the commercial building located at 731 Market Street; the lease included an initial 20-year term, subject to several lease extension options which allows CVS to extend the lease term by an additional 25 years. In 2015, 731 Owner conveyed the property and assigned its leasehold-interest to its buyer. In connection with the sale, 731 Owner paid to San Francisco a documentary transfer tax that included an amount attributable to the present value of 731 Owner’s anticipated rental income for the remaining 41 years of the lease. 731 Owner then sought a partial refund from San Francisco for the portion of the transfer tax attributable to the value of its leasehold interest. After San Francisco declined to issue the partial refund, 731 Owner filed a complaint against San Francisco for declaratory relief. The trial court held that 731 Owner did not owe a transfer tax for the assignment of its leasehold interest to the buyer, and awarded 731 Owner a refund for $286,922.00. San Francisco appealed, and the appellate court affirmed the trial court’s decision.

The issue in the case was simply whether the assignment of the landlord's interest in the CVS lease in 2015 was a taxable event. The court held that it was not a taxable event because CVS remained in possession of the premises, and because the property was subject to a lease that had at least 35 years remaining in its term (including unused extension options).

San Francisco may impose a documentary transfer tax on "each deed, instrument or writing by which any lands, tenements, or other realty sold within the City and County of San Francisco shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers. . ." pursuant to San Francisco Business and Tax Regulations Code § 1102 (emphasis added) (the "Real Property Transfer Tax Ordinance").

The Real Property Transfer Tax Ordinance does not define "realty sold," but states that the scope of "realty" is determined by the definition or scope of the term under state law. The appellate court, using state law regarding reassessing property for property tax purposes as guidance, analogized "realty sold" with "change in ownership." The court found that "[t]he property law statute provides that, unlike the creation of a lease of more than 35 years, a transfer of property subject to a lease with a remaining term of more than 35 years is not a 'change in ownership.'" The logic behind this distinction is that when property is encumbered by a leasehold interest with at least 35 years remaining, it is, for purposes of reassessing property taxes, the tenant that is deemed to hold the equivalent of the fee interest in the property. In analogizing the "change of ownership" interpretation with the "realty sold" provisions of the Real Property Transfer Tax Ordinance, the court found that "the 2015 sale of the underlying property subject to CVS's lease did not result in a change in ownership and therefore did not constitute 'realty sold' to trigger the transfer tax. At the time of the 2015 transaction, CVS maintained all the same rights under the original lease, which had a remaining term of more than 35 years. . . . Because CVS's primary ownership interest in the leasehold never changed hands up to and including the time of the 2015 transaction, there was no 'realty sold' under the [Real Property Transfer Tax Ordinance]."

What does this mean for commercial property owners? Significant tax savings. The transfer tax rate fluctuates depending on the value of the property at issue, and the costs are typically allocated contractually amongst the parties in a transaction. In San Francisco, the tax rate is 0.75% when the value of the property is between $1,000,000 and $4,999,999 and increases to 2.25% when the value of the property is between $5,000,000 and $9,999,999; the tax rate can climb to as high as 3% when the value of the property exceeds $25,000,000. Depending on the length of the remaining term of the lease and the present value of anticipated rent, this ruling may save hundreds of thousands of dollars for commercial property owners.

Covid-19 Fallout Could Lead to Lower Commercial Property Taxes

In the wake of the Covid-19 pandemic, commercial property owners are faced with tenants experiencing revenue shortfalls, closures, and bankruptcies. These owners still need to meet their debt and other obligations.

Jason Yarbrough of Meyer, Unkovic & Scott LLP explains how such owners might get a break by challenging their property tax assessments.

The Covid-19 pandemic, government-ordered shutdowns and resulting economic turmoil have had a profound impact on commercial property owners. Even as state economies begin to reopen, income-producing properties are experiencing revenue shortfalls, tenant closures and evictions, bankruptcies, and changes in consumer habits and industry trends that may continue throughout 2020 and beyond.

Weakened demand for retail shopping for goods and services as a result of the pandemic not only causes an immediate disruption, but it may lead to long-term changes on occupancy rates and market rents, leading to lower property values. While these factors may negatively impact property owners in a number of ways, they can also open the door to some financial relief in the form of lower taxes by challenging property values through tax assessment appeals.

For some owners, a successful tax appeal can result in substantial sums of money, consisting of refunds and reduced expenses for years to come.

Covid-19's impact on retail

This is a difficult time to own a shopping center and other income-producing properties. Amid the pandemic, even some of the largest retailers have stopped paying rent altogether and are attempting to negotiate abated or deferred rent. Meanwhile, property owners have to continue to meet their debt, maintenance, and other obligations on reduced rents.

Some large retailers, already struggling pre-pandemic with the continued rise of online shopping, have filed for bankruptcy and announced store closures. It is expected that more retail bankruptcies will follow. When a major anchor tenant closes, it has the potential to have a ripple effect throughout a shopping plaza. Tenants who are struggling, but have a co-tenancy clause requiring the presence of an anchor tenant, may try to seize on these closures as a golden parachute and opportunity for an early exit from their lease obligations.

For many small businesses, even federal assistance in the form of Paycheck Protection Program loans and other emergency programs may not be enough for them to survive extended closures or weakened consumer demand.

As a result, commercial property owners are likely looking at increased vacancies, a longer period of time to fill vacancies, and the potential of having to accept reduced rents in order to do so.

Together, these and other factors make it less certain that owners of income-producing properties can maintain a certain level of occupancy and profitability and suggest a reduction in property value. Reduced property values can lead to lower assessed values and lower property taxes.

Is a tax appeal worth it?

Based on the way that income-producing properties are valued, the impact of Covid-19 can lead to many commercial properties becoming good candidates for lower property taxes. In many instances, the actual costs of hiring a professional to assist with a commercial real estate tax appeal are small when compared to the potential savings that may be achieved, particularly where a property owner may enjoy reduced property taxes for many years.

How do appeals work?

A tax appeal must be filed by the deadline established by each county. Most tax appeals involve a first level administrative hearing, where a government official decides if an adjustment is needed based on the evidence presented. This decision is final if not properly appealed.

On appeal, property owners will be required to share economic and other details about their properties so that the taxing authorities can reach their own conclusions and make their own arguments on a proper assessed value. There is an opportunity for all involved to settle on an agreed assessed value. However, if no agreement can be reached, the matter is scheduled for a trial or evidentiary hearing, and a judge decides the property's value based on the evidence and testimony at trial.

How do you establish a value in a tax appeal?

The burden of proof is on the party seeking to change the assessed value. Property owners typically look to establish the property's value based on one of three methods: the income approach, the sales comparison approach, and the cost approach. The income approach is the most common appraisal methodology for valuing commercial properties.

The income approach values the property as an investment, and looks at factors such as income, expenses, vacancies, and investment risk in determining a property's value. The fallout of Covid-19 will likely lead to lower profitability expectations for a "stabilized property," leading to reduced property values.

Stabilization occurs when a property reaches a projected range of "normal" occupancy for the property. The economic impact of Covid-19 has the potential to materially impact what constitutes a stabilized property. Further, some properties which are no longer stabilized may be entitled to an additional reduction until stabilized.

As an example, consider a shopping plaza which typically was considered to be stabilized when it was 85% occupied, prior to Covid-19. By January 2021, shopping centers may be looking at an entirely different ratio with more vacancies. Decreased occupancy rates at the property at issue and the overall market are just a couple of factors that will help property owners obtain lower property tax bills.

What will the future hold?

The days to come, more than ever, are uncertain, but it appears that the impacts of Covid-19 will be felt long after the current wave of infections dissipates. Experts warn of a potential second waves of cases, and government-mandated measures like reduced capacities, mask use, and social distancing are likely to continue for some time. In the same period, small business owners and large retail establishments alike may be hesitant to open new stores.

Property owners are seemingly getting hit on all sides, so any potential benefit must be explored. There is a real opportunity to reduce property tax bill in this environment, but it may require property owners to file a 2021 tax appeal ASAP if they want to preserve a challenge to next year's assessed value.
Cc:

County Assessor's 2020 Assessment Roll Reflects Pre-COVID Market Conditions

Los Angeles County Assessor Jeffrey Prang certified the 2020 Assessment Roll, reflecting economic growth and an increase in the assessed value of all taxable real property and business personal property countywide.

The 2020 Assessment Roll (Roll) grew by $95.9 billion (or 5.97%) over the prior year to $1.7 trillion in total net value. In addition to the values of the County's 2.38 million real estate parcels, this total amount reflects $87.9 billion in business personal property, which includes boats, machinery, equipment and aircraft.

The $1.7 trillion total net value translates into about $17 billion in property tax dollars for vital public services such as public education, first responders and healthcare workers, as well as other County services.

The Roll is the inventory for all taxable property in the County and, as such, can provide some insight into the health of the real estate market. Although there was a slowdown in sales, there was continued growth in property values. The Roll is also driven in large measure by real property sales, which added $49.6 billion to the Roll as compared with 2019; the CPI adjustment mandated by Prop. 13, adding an additional $30.8 billion; and new construction added $13.4 billion.

Assessments are based on the value of property as of the lien date of January 1, 2020, which was a couple of months prior to the outbreak of COVID-19 and there is a strong indication that the next year's lien date may tell a different story.

"Although the 2020 Assessment Roll reflects steady growth, which is good news, it's important to remember this report is pre-COVID-19," Assessor Prang said. "It's still too early to tell how the pandemic will affect our economy but we already see early indications that our growth may be slowing next year, especially for commercial and industrial properties."

This year's 5.97% increase eclipsed the official May estimate, which was anticipated at 5.25%. The increase was driven in large measure by the availability of significant production hours that normally would have been spent on assessment appeals, which have been suspended since March.

"I am pleased to report that the 5.97% increase in assessed property values in Los Angeles County represents 10 years of consecutive growth," Assessor Prang said. "We continue to improve our ability to produce a fair, accurate and timely Assessment Roll, which is aided in large measure by our new, enhanced technology."

However, Prang cautioned that next year is not going to be nearly as strong because of the pandemic, which has devastated the economy to levels only seen during the Great Depression. The reduction in sales tax revenue, housing market slow down and high unemployment is going to most likely have an adverse effect on the economy, Prang said.

COVID-19 also presented unanticipated obstacles to produce this year's 2020 Roll, especially with the closure of County facilities to the public as well as the need to telework because of "Safer-At-Home" protocols.

"On any given day, we had 85 to 95 percent of our workforce teleworking." Prang said. "The 1,400 employees here in the Assessor's Office delivered a fair, accurate and timely Assessment Roll, while still providing excellent public service, despite significant impediments."

Prang also reminded residents that the growth does not mean property owners will be subject to a corresponding increase on their annual property tax bills. Nearly 9 out of 10 property owners will see only the modest 2 percent adjustment prescribed by Proposition 13.

Among the benchmarks set by the 2020 Roll is the total amount of $654 million in tax savings for seniors, veterans and charitable organizations.

The 2020 Assessment Roll comprises 2.58 million real estate parcels and business assessments, including 1,882,121 single-family homes, 250,089 apartment complexes, 247,562 commercial and industrial properties and more than 205,000 business property assessments.

10% of Landowners Will Pay 92% of New Property Tax Revenue, Prop. 15 Supporters Say

A new report from supporters of a November ballot measure aimed at increasing property taxes on commercial and industrial property in California finds that more than 90% of the additional property tax revenue Proposition 15 would generate will come from just 10% of the highest value properties.

The measure would amend the California Constitution to create a so-called "split roll" by reforming the 1978 measure Proposition 13, which slashed property taxes across the state and placed a limit on annual tax increases for both residential and commercial property.

Prop. 13 was sold as a way to create stable and predictable property tax bills, especially for seniors on fixed incomes. But critics have long complained that large corporations have unfairly benefitted from those protections, allowing them to keep assessed property values at well below market rates, resulting in a loss of revenue to schools and local government.

Prop. 15, which is financed primarily by the California Teachers Association and other unions, could generate a net increase in revenue between $6.5 and $11.5 billion dollars a year, with 40% of that going to K-12 schools and community colleges, and 60% going to local governments. The range of revenue estimates relates to growth in the real estate market.

The Schools and Communities First campaign, which collected signatures to put Prop. 15 before voters, exempted properties valued at $3 million or less, a change from an earlier version that was intended to allay fears of small businesses that they would be walloped by unaffordable property tax increases. Those properties will not be reassessed unless they belong to a landowner whose combined properties add up to more than $3 million in value.

"Nearly 50% of the revenue raised by the measure will come from properties that have not been reassessed since before 2000," said Tim Gage, a former director for the California Department of Finance whose Blue Sky Consulting Group conducted the study for the Yes on 15 campaign using assessor's property tax data provided by the University of Southern California.

The report found that after accounting for exempted properties valued at under $3 million, properties valued at $5 million and more would generate more than 84% of the new revenue. Those properties are highly concentrated in places like San Francisco and Silicon Valley with high value commercial and industrial property that hasn't changed hands or been reassessed in many years, Gage said.

Critics, including John Kabateck, California director of National Federation of Independent Business (NFIB), which advocates on behalf of small businesses, called the report a "veiled attempt to pull the wool over taxpayers and voters eyes."

Kabateck, and opponents of Prop. 15, said the final version of the measure would still end up harming many small businesses.

"They talk a lot about the exemption and the small businesses aren't hurt and that they're really just attacking the big guys, the big corporations," Kabateck said. "What they fail to mention is that the majority of small business owners, upwards of 80%, rent their property. That cost is passed on directly from property owners."

The Yes on 15 campaign responds that if a majority of the property is occupied by small businesses, the reassessment would be deferred until 2025-26. Gage also noted that landlords who have benefitted from artificially low property taxes have likely not passed those savings along to their tenants.

Prop. 15 would leave property tax increases for homeowners untouched, and it generally exempts agriculture land from being reassessed. However the California Farm Bureau is opposing Prop. 15, saying protections for growers aren't ironclad and could end up raising their property taxes.

Conceived well before the COVID-19 pandemic and resulting recession, it's unclear how Prop. 15 along with high unemployment will affect voters' appetite for higher taxes on businesses.

In addition to unions, a wide array of Democrats are supporting Prop. 15, including former Vice President Joe Biden, Sen. Kamala Harris and several other former presidential candidates and members of Congress.

Opponents include the California Business Roundtable, the Chamber of Commerce and the California Taxpayers Association.

The measure will appear on the November 3 ballot.

San Diego County property now valued at record $604B

The value of land in San Diego has never been higher.

San Diego County’s assessed value of all taxable property — including residential, commercial and industrial land — is now $604.75 billion, the Assessor’s Office said this week. It represents an increase of 5.18 percent from last year.

The valuation date is set at Jan. 1 each year, so any potential impact from COVID-19 is not included in this year’s numbers. If the real estate market crashes this year, even though that is not predicted by most housing analysts, it could mean a change when new valuations are calculated in January 2021.

While the valuation was expected to increase and not a huge surprise, it might be welcome news to government planners. A drop in sales and income taxes is likely for all of California as it wrestles with increasing cases of the coronavirus and record unemployment.

County Assessor Ernie Dronenburg credited the 1978 Proposition 13 as a reason for steady increases, which caps increases up to 2 percent annually based on the purchase price at the time of the sale.

“Prop. 13 is a static measurement,” he said Monday. “It provides a reliable government funding source for key services.”

Property values have grown considerably since 1990 when San Diego County was assessed at $123.7 billion. The most values ever went up in a year was in 2005, at the height of the housing boom, when it increased 13.3 percent.

Assessed value of land

The Great Recession caused property values to drop 2.31 percent in 2009, 1.56 in 2010 and 0.14 in 2012. Part of the reason for lowered valuation besides homes selling for less money was Prop. 8, which allowed California assessors to reduce the assessed value of properties if market values dropped significantly.

While that may be a possibility for some homeowners if home values are hurt by the economic fallout of COVID-19, home prices in San Diego County are still on the rise. As of May, the median home price was at a near-record high of $590,000, increasing 3.5 percent in a year. Analysts point to a variety of factors keeping prices up: Low inventory of homes for sale causing price wars, the increased value put on homeownership as workers continue to work from home and low mortgage rates.

Residential properties make up the vast majority of taxable land in the county with 936,884 parcels. It is followed by commercial with 27,087 parcels, industrial with 11,233 parcels and recreational with 15,319.

National City saw its assessed value grow the most under the new valuation, up 7.1 percent in a year. It was followed by Santee at 7 percent, Chula Vista at 6.26 percent and Del Mar at 6 percent. The lowest increase was Poway at 4.33 percent.

In terms of overall values, the city of San Diego has the highest assessed land at $291.3 billion. It was followed by Carlsbad at $37.3 billion and Chula Vista at $33.7 billion. Lemon Grove had the lowest at $2.53 billion.

The majority of taxes, around 45 percent, collected went to schools in the last fiscal year in San Diego County. The other big recipients were the county with 13.1 percent and individual cities at 12.6 percent.

The biggest property taxpayers that fiscal year were SDG&E with $148.3 million, Qualcomm with $25.6 million and the Irvine Co. with $14.4 million.

It might be a while before San Diego County’s value increases can be compared to other parts of California because several counties have delayed publishing tax rolls as they deal with COVID-19, which is slowing their ability to complete work.

The county's valuation might have been around $36 million higher but several programs from the Assessor's Taxpayer Advocate outreach program lowered bills for welfare institutions, like churches, museums and nonprofits. Its program to greatly reduce tax bills of disabled veterans cut about $14 million off the tax rolls.

There could be changes coming to tax rolls after November because of a new initiative called Proposition 15. It would remove commercial properties from the same tax roll benefit homeowners get under Prop. 13, with the idea it would increase taxes on corporations that could fund schools and other government programs.

Prop. 15 would affect only commercial properties worth more than $3 million and businesses with 50 or fewer employees would be exempt. Proponents like the California Teachers Association say commercial properties paying taxes on current assessed values, unlike the original sale price in Prop. 13, would unlock seriously needed funding after the pandemic. Opponents, such as the California Assessors' Association (Dronenburg is president-elect), are opposed largely because of implementation costs tied to a newly trained workforce and concern it could lower taxes in small and rural counties.

Bay Area property tax rolls are up 6.7% this year. It's next year assessors worry about

The total assessed value of taxable property in all Bay Area counties except Contra Costa hit $1.72 trillion as of Jan. 1 — up $108 billion or a healthy 6.7% over last year — but growth could slow significantly this year as demand for office space slows, home sales plunge and inflation subsides.

County assessors had until July 1 — the start of the 2020-21 fiscal year — to finish computing the assessed value as of Jan. 1 of all taxable property in their county, including land, homes, commercial real estate, business equipment, boats and airplanes. This is called "closing the roll." The assessed value is the amount subject to property tax. It's what property owners will see on their 2020-21 tax bill in the fall.

Contra Costa County got an extension until Aug. 10 to complete its 2020-21 roll because of the coronavirus pandemic. If you include its roll from last year, the Bay Area total would surpass $1.9 trillion.

Under Proposition 13, property in California is reassessed, generally at market value, only when it changes hands. (Some transfers, such as between parents and children and by people over 55 in some cases, are exempt from reassessment.) In between changes of ownership, assessors can only tack on the value of new construction or improvements, plus an inflation rate capped at 2% per year. So assessed value is often far below market value.

Cities and counties need property taxes for schools, social services, public health, fire, police and sheriff's departments and other government activities. The average tax rate in California is around 1.2% of assessed value, including voter-approved local taxes. A $1billion increase in assessed value generates about $12 million in additional taxes.

The main things that boost a county's tax revenue are commercial and residential construction, properties changing hands at higher prices and the inflation rate. This rate is based on the annual change in the California Consumer Price Index each October. It can be less than 2% but can't exceed that amount.

In recent years, construction of new offices for tech and biotech companies, and housing for their workers have powered property tax increases in many parts of the Bay Area.

In Santa Clara County, the assessor added $650 million to this year's roll from construction at Moffett Towers II in Sunnyvale, an office project developed by Jay Paul and leased to Amazon and Facebook; $594.6 million from construction at the mixed-use Santa Clara Square; and $332 million from the Google Bay View project in Mountain View.

It added $102 million from the sale of land underneath California's Great America amusement park to its owner, Cedar Fair Entertainment Co., which had been leasing the land from the city of Santa Clara.

In San Mateo County, two big contributors to this year's roll were the Facebook campus expansion in Menlo Park, which added $561 million, and the Burlingame Point Project just south of San Francisco International Airport, which added $544 million. The Burlingame project, which includes four office buildings, was envisioned as a life sciences campus, but Facebook decided to lease the entire complex. It will move its Oculus virtual reality division into it next year.

In San Francisco, the sale of Levi's Plaza for an estimated price of $820 million added $400 million to the roll and the newly opened Chase Center, home of the Golden State Warriors, added $350 million. Commercial projects that take years to build are added to the roll incrementally, as construction progresses.

For the Bay Area, this year's growth rate was on par with last year's, but some assessors warned that the shelter-in-place orders that took effect in mid-March could slow their roll growth.

Demand for office space is already declining as the great work-from-home experiment shows signs of success. Facebook CEO Mark Zuckerberg said in May that within 10 years as many as half of its employees can work remotely. Jack Dorsey's San Francisco companies Twitter and Square said they'll let most employees work from home permanently. So will Quora of Mountain View and San Francisco's Coinbase, which call themselves "remote-first" companies.

In San Francisco, companies signed new leases on just 266,000 square feet of office space in the second quarter, the lowest level since at least the 1990s, according to Cushman & Wakefield data. In Silicon Valley, office leasing in the second quarter hit its lowest rate in 16 years, brokerage firm CBRE reported.

Falling home sales are another concern. The number of existing single-family homes sold in the Bay Area fell 37% and 51%, respectively, in April and May compared with the same months last year. The median price of homes sold in those two months declined just 0.8% and 2.5% year over year, according to the California Association of Realtors.

The sales plunge — caused by restrictions on home showings, falling stock prices and uncertainty over where prices are heading — is a problem for counties because fewer homes are reassessed at higher prices.

But if prices also fall sharply, recent home buyers could seek a Proposition 8 tax reduction. This proposition says that if the market value of a home falls below its assessed value, the homeowner can ask the assessor to temporarily reduce the assessed value to the market value.

After the real estate bubble popped in 2006, home values fell so deeply that most Bay Area assessors applied reductions automatically to ones that had sold in the few years before and after the housing market crashed. Although millions of homeowners got tax reductions, Bay Area assessment rolls generally rose, albeit modestly, thanks largely to the inflation factor.

As home prices recovered, most of these reductions were reversed and those homes are now assessed where they would have been had they not gotten the reduction. In San Mateo County, only 295 residential properties still have a Prop. 8 reduction, down from 34,7000 in 2011-12.

This time around, assessors expect to see a flood of requests for property tax cuts from businesses, not homeowners.

“The value of commercial property is the income it generates. If your tenants moved out, went broke, stopped paying rent, or all of the above, then we are going to see significant reductions,” Santa Clara County Assessor Larry Stone said. “I predict the negative impact on commercial property values as a result of COVID-19 will be greater than the impact that occurred in the (previous) recession, which was a residential-triggered recession.”

He added that the inflation factor next year could drop below the 2% cap, as it did five times since 2003. In 2010-11 it dipped below zero. In April, the California Consumer Price Index was slightly below where it was in October.

Record rolls for Bay Area counties

County	2020-21 roll (in billions)	Increase from last year
Alameda	$329.9	6.8%
Contra Costa*	N/A	N/A
Marin	86.0	4.6
Napa	43.9	5.3
San Francisco**	298.0	7.6
San Mateo	255.1	7.0
Santa Clara	551.5	6.9
Solano	60.9	4.9
Sonoma	98.6	4.7
Total	**1,723.9**	**6.7**

The roll is the assessed value, as of Jan. 1, of all secured and unsecured property subject to property tax, net of exemptions. Most Bay Area counties completed, or closed, their rolls by the July 1 deadline.

*Contra Costa obtained an extension to close its roll by Aug. 10 because of the coronavirus pandemic

**Estimate

Source: Chronicle research

In San Mateo County, “We anticipate that these disruptions will have a negative impact on the 2021-22 assessment roll,” Assessor Mark Church said in a news release. The shelter-in-place mandate likely affected retail and hotel properties, and many commercial and residential property owners “experienced lost rent while also being subjected to eviction moratoriums.” He also said the county would be “proactive” in reducing assessments where “market data shows that the fair market value on January 1, 2021 is lower than the calculated taxable value.”

One wild card is Proposition 15, the split-roll initiative on the November ballot. It would maintain Prop. 13 treatment for small businesses, agricultural land and residential property, including apartment buildings. But it would require other commercial and industrial property to be reappraised and taxed at its full market value periodically, with a partial tax exemption for business personal property such as computers and office equipment.

If passed, it would be phased in over several starting in 2022-23. When fully implemented, it could increase statewide property tax revenues by $7.5 billion to $12 billion annually, according to a Legislative Analyst's report. But it also would create "significant new administrative responsibilities for counties, particularly county assessors" that could cost "hundreds of millions of dollars per year."

A sure loser heads to the November ballot | California Focus

Heedless of informed advice about conditions in California, labor unions behind the Split Roll ballot initiative are now persisting in their attempt to fundamentally alter the landmark Proposition 13.

Their measure would remove the 1978 ballot initiative's property tax protections from commercial and industrial property, while leaving residential levies untouched. If this passes, commercial land and buildings would be taxed based on current market values, while yearly residential property taxes would still be based on 1 percent of the latest purchase price or 1 percent of their 1975 assessed value if ownership has not changed. Residential levies can climb by no more than 2 percent per year.

This alteration would give local governments and public schools an additional $11 billion to $12 billion annually, sponsors say. It would do nothing about the longtime Proposition 13 inequity which sees neighbors in similar properties paying wildly different property taxes, depending on when they bought.

But the alleged commercial property tax total is fictitious at this moment, the remnant of a bygone era that ended with the coronavirus shelter-at-home order issued in March by Gov. Gavin Newsom. The governor, using emergency powers, coupled his stay-home order with others allowing tenants, both individual and commercial, to delay paying rent for months at a minimum.

With much of the withheld rent money – perhaps 15 percent of all that tenants normally pay – now in limbo, property owners and appraisers can't accurately assess the value of commercial property. Owners don't know how much they will really get if tenants like the Cheesecake Factory restaurant chain, which refused to pay rent while its eateries were shuttered, don't eventually pay up.

Other commercial tenants withholding rent will likely let it pile up, then negotiate settlements with building managers. Owners of many buildings will never get the full rent they were due.

Also, because corporations like Twitter, Facebook and many more have told white collar workers to keep working from home as long as they like – and many like it much better than commuting – a healthy percentage of office building owners have no idea how much of their space may soon be vacant.

Taken together, this makes it almost impossible for owners or appraisers to calculate the actual value of much of California's commercial property, since office buildings' value depends largely on income they produce. This makes the numbers often purveyed by Split Roll sponsors completely speculative.

Into this quagmire steps the new ballot measure, pushing a fundamentally good idea, but one that will be slammed mercilessly in television and social media advertising as landlords fear high taxes that might force them out of business.

When, not if, this proposition loses at the polls, it will become virtually impossible politically to tinker with Proposition 13 for years to come, as the initiative most likely returns to its prior status as the untouchable third rail in California politics. The measure was nearly sacrosanct in Sacramento for more than 40 years, legislators of all political persuasions fearing the wrath of homeowners, who always cast ballots in higher proportions than other groups.

Standing by to help dump the Split Roll into a deep grave is the Howard Jarvis Taxpayers Assn., named for the more famous of Proposition 13's two authors.

For decades, this outfit has opposed anything that looks like it might alter even the tiniest aspect of its pet law. The Jarvis organization frequently sends mailers to property owners warning them any attack on any part of Proposition 13 promises to send their taxes through the roof. That's happening again now, as official-looking mailings from the group turn up from time to time in homeowner mailboxes.

These will become more frequent as November nears. The din around Split Roll might even drown out presidential balloting, which figures to be among the noisiest in years.

The bottom line: Sponsors believe the financial needs of schools in the wake of the coronavirus-caused recession, plus a rising sense of general resentment of injustice, will push this initiative over the top even in this very odd election year. The betting here is that they are dead wrong.

The Split-Roll Initiative Is Poised to Rock California's Property Tax System

This November, California voters will decide whether commercial and industrial properties will lose their Proposition 13 protection against property tax reassessment.

TAKEAWAYS

- The Split-Roll Initiative has officially qualified for California's November 2020 ballot.
- The Initiative would require commercial and industrial properties to be reassessed to fair market value at least every three years.
- The California Assessors' Association has raised serious concerns over the implementation of the Split-Roll Initiative.

The great California property tax debate is officially headed to the November 2020 ballot. Voters will decide whether commercial and industrial properties should enjoy the same Proposition 13 protections as residential property.

Current Law

Proposition 13 applies to commercial and industrial properties in the same manner as residential properties.

Under Proposition 13, property is reassessed to its fair market value only when there is a change in ownership or new construction event. Otherwise, property tax assessments may increase by no more than 2% per year and the base tax rate is limited to 1%.

Proposed Law

Initiative No. 19-0008 (The California Schools and Local Communities Funding Act of 2020) seeks to create what is known as a "split roll" whereby taxable commercial and industrial properties would be stripped of their Proposition 13 protection against reassessment while residential properties would remain protected. The Initiative would leave intact the 1% base tax rate.

Commercial and industrial real properties would be reassessed to their fair market value beginning as early as the 2022-23 lien date and would be required to be reassessed at least every three years thereafter.

Commercial and industrial real property would be defined to include:

- Real property used as commercial or industrial property; or
- Vacant land not zoned for residential use and not used for commercial agricultural production.

Commercial and industrial real property would not include the following property types, which would remain Proposition 13 protected:

- Real property used as residential property, whether owner-occupied or rented, with limited commercial use permitted such as home offices, home-based businesses, or short-term rentals;
- The portion of mixed-use real property used as residential property;
- Land used for producing commercial agricultural commodities; and
- Vacant land used or protected for open space, a park or equivalent designation.

Commercial and industrial real property with a fair market value of less than $3 million would be excluded from the split-roll regime so long as a timely claim is filed annually with the county assessor and none of the property's direct or indirect owners hold interests in California commercial or industrial real property that, in the aggregate statewide, exceeds $3 million in fair market value. Administering the $3 million exemption would require county assessors to coordinate their value determinations for taxpayers holding property in more than one county. The county assessor's individual fair market value determinations would be conclusive for purposes of this exclusion and may only be challenged in court for abuse of discretion.

While taxpayers would be permitted to administratively appeal their reassessments, the Initiative provides for much stricter hearing rules by:

- placing the burden of proof on the taxpayer to demonstrate that their property was not properly valued;
- requiring taxpayers to include supporting evidence as part of their initial appeal filing; and
- eliminating automatic acceptance of the taxpayer's opinion of value if the appeal is not decided within a given timeframe.

The Initiative also contains an unrelated property tax exemption for tangible personal property owned by qualifying small businesses and a combined $500,000 exemption for tangible personal property and fixtures for all other owners.

The Battle Lines Are Drawn

Proponents of the Initiative cite the need for increased school and local community funding as the driving force behind their proposal. Supporters argue that businesses have been unfairly benefitting from Proposition 13 to avoid property tax increases. They estimate that the Initiative would result in a $7.5 billion to $12 billion annual increase in property tax revenue.

Opponents question whether substantially increasing property taxes amid the economic devastation of the pandemic is in the best interest of California, which already ranked nearly last (48th out of 50) in the 2020 State Business Tax Climate Index. Many businesses have already relocated to other states in response to California's taxation burdens and opponents worry that increasing property taxes will cause additional companies to leave the State. Opponents argue that the stability provided by Proposition 13's assurance that a property's assessment will not increase by more than 2% a year plays a vital role in the sustainability of California businesses. The loss of this assurance would increase the burden on small businesses, impact jobs, deter future growth, and ultimately, increase the cost of living in California as much of the additional property tax is expected to be passed on to consumers.

Implementation Challenges

Santa Clara County Assessor Larry Stone told State Assembly members at an informational hearing on June 4th that "[i]t would be impossible—not difficult, but impossible—to administer all of the provisions of the measure as it is written."

The California Assessors' Association released a white paper indicating that in order to implement the Initiative:

- the statewide cost to close the assessment roll would increase by $380 million to $470 million annually in the first five to ten years, which includes neither the cost of the technological upgrades that would be required nor the costs associated with the increased workload on downstream agencies;
- 900 new positions would be needed statewide, which is expected to "overwhelm the system" and "take years for counties to fill;" and
- "the number and complexity of appeals submitted will likely result in a major backlog requiring multiple years to resolve."

Under the Initiative, the additional property tax revenue would go first to cover counties' increased administrative costs required to implement the Initiative and also to backfill the loss in state income taxes due to the increased deductions caused by the property tax assessment increases. The remaining revenue would then be allocated, county by county, in the same way as current property tax revenues—roughly 60% to local government and 40% to schools.

The Fallout

Small businesses and renters will likely be hit the worst by the Initiative as most are triple net tenants, meaning the landlord will simply pass on the increased property tax to the tenant. The Initiative does not include any reassessment protections for small businesses who rent.

Reassessment is deferred until the 2025-26 lien date for properties that are at least 50% occupied by independently owned and operated small businesses that own California real property and have less than 50 annual full-time employees. However, limiting qualifying small businesses to those who own California realty again overlooks the fact that most small businesses rent rather than own.

The narrow carveout for "real property used for commercial agricultural production" only extends to the land, leaving agricultural improvements such as barns, dairies, wineries, processing plants, vineyards and orchards subject to reassessment.

Property currently shielded from assessment through a new construction exclusion, such as active solar energy systems and work related to seismic retrofitting, life safety and ADA compliance, will become subject to assessment under the Initiative. Recognizing that loss of the property tax exclusion threatens to upend the economic viability of many of California's solar projects, new legislation (AB 105) has been introduced in an effort to rescue eligible solar projects from the fallout of the Initiative.

Conclusion

The Initiative leaves many things to question, but one thing is clear—if passed, California's property tax system will be changed drastically. The Initiative needs only a simple majority to pass.

COLORADO

Colorado property owners: What to expect if Gallagher Amendment is repealed

The November vote will have a profound effect on commercial and residential property owners.

While the repeal of the Gallagher Amendment would be a welcomed change for commercial property owners and developers, it comes with other societal impacts and increased financial burdens on homeowners. Nevertheless, in light of current circumstances, those burdens seem relatively small compared to the alternative.

Gallagher Amendment background

Originally added to Colorado's constitution in 1982, the Gallagher Amendment sought to curb snowballing residential property taxes. It mandated that, regardless of the total amount of collections, state property tax revenue be comprised of: (1) 45% residential property taxes, and (2) 55% non-residential property taxes. To achieve this 45/55 split, the Gallagher Amendment set the commercial property assessment rate at 29% of market value, while the residential property assessment rate, originally set at 21% in 1982, would adjust to satisfy the 45/55 split.

Today, as a result of these mechanisms and a dramatic rise in residential property values across the state over the last 38 years, the residential property assessment rate has fallen to just 7.15% of the market value for such residential property. Accordingly, Colorado homeowners now enjoy some of the lowest property tax rates in the United States, while commercial property owners pay four times the property tax rate of residential properties, some of the highest property tax rates in the country.

Communities across Colorado have continued to see increased need for public services arising from population growth, juxtaposed with declining property tax revenues. As the aggregate market value of residential properties increase, the residential property assessment rate has needed to be continuously lowered to satisfy Gallagher's 45/55 split. Although residential properties now make up approximately 80% of all market value in the state, they collectively comprise only 45% of the state's property taxes. For that reason, many parts of Colorado find themselves severely underfunded – particularly rural communities that have not seen the same housing market boom as the Front Range.

As another consequence of the Gallagher Amendment, local governments may be less inclined to approve residential projects as compared to commercial or industrial projects. Residential development contributes relatively little in property tax revenue and can even be viewed as an additional cost burden on already underfunded local governments. And, as the continued shift to online retail diverts the receipt of critical sales taxes, local governments will find themselves in increasingly dire revenue circumstances.

These effects are now exacerbated by a global pandemic that is threatening to send the market value of commercial property plummeting. Any such crash in commercial property values would necessitate a drastic reduction in the assessment rate for residential properties, thereby substantially reducing the state's total property tax collections. Current predictions estimate that this reduction in tax revenues could reach $500 million.

The other side of this coin is that, once the assessment rate for residential properties falls, it will be very difficult for it to be raised back to pre-pandemic levels, as a tax increase would require a vote of Colorado residents under the state's other seminal tax limiting constitutional amendment.

These factors are the driving force behind the proposed repeal of the Gallagher Amendment.

Repeal and implications for residential and commercial property owners in Colorado

In June, the repeal proposal gathered the requisite number of votes from Colorado legislators to be placed on the November ballot. There is considerable uncertainty surrounding the potential repeal of the Gallagher Amendment, as repealing it will require a simple majority of voters and it is unknown what assessment rates or scheme would fill its void.

If the Gallagher Amendment is not repealed, commercial property taxes are sure to increase. As residential property values continue to rise, the residential property assessment rate is now projected to drop to 5.88% if the Gallagher Amendment isn't repealed. The future for commercial property owners looks bleak, as they will pay almost five times the residential assessment rate in the next year.

The repeal may be coupled with a moratorium on changing the assessment rates, as a separate bill (SB 20-223) contemplates just that. If enacted, it would lock in residential assessment rates at 7.15% and commercial assessment rates at 29%. This option would stave off additional cuts to the residential assessment rates. Importantly, such a freeze would also shelter commercial properties from increased property tax payments (due to the potential for an increase in the residential property assessment rate following a repeal of Gallagher). Nevertheless, this option would not immediately level the disproportionate assessment rates and residential properties would still be paying one-fourth of the assessment rate of commercial properties — meaning rural communities would certainly still be underfunded. The benefit here, at least for commercial property owners and developers, is that the situation would not continue to get worse, as it has for so many years.

If the Gallagher Amendment is repealed but no freeze is implemented, the state legislature could adjust assessment rates, subject of course to voters approving such a measure. This would likely mean an increase in residential property tax rates to bolster state property tax collections. In this circumstance, even if commercial property assessment rates remain the same, the result would be a more equitable split in property tax burden. Small businesses could be protected from increased rent due to triple net leases, which pass through tax payments to tenants. In any event, it would all be up to the legislature, which Coloradans have historically been reluctant to trust.

The repeal could lead to other factors that impact real estate development. For instance, the increase in tax revenue in communities would lead to subsequent improvement of local services provided by local governments, such as fire and police protection, and additional school funding. This, in turn, should make underserved and rural communities more attractive places to live, thereby presenting additional development opportunities to support Colorado's continued growth. In the absence of Gallagher, local governments may also be more inclined to approve residential development where they previously chased commercial and industrial uses as a result of revenue consequences.

However, increasing the residential assessment rate creates additional financial burdens for home owners across the state, including those living in the Front Range that are already struggling with a high cost of living. The increased tax burden will make home buying even more unattainable for low income families and force individuals further outside the metro area, leading to additional urban sprawl. The increased residential tax burden would also likely impact renters, as additional taxes are likely to increase residential rent rates. Affordable housing development may be even more challenging.

The potential repeal of the Gallagher Amendment brings a variety of possible and long-lasting consequences for all Coloradans. Whether the repeal results in a moratorium or an adjustment in assessment rates, commercial properties are sure to benefit so long as the Gallagher Amendment is repealed. In either event, the November vote will have a profound effect on property owners.

FLORIDA

Property appraisers seek to help landowners with taxes

Florida's elected property appraisers are collaborating to help property owners throughout the state pay their taxes amid the greatest economic and housing crisis in a decade, according to Miami-Dade Property Appraiser Pedro Garcia.

With the cooperation of state legislators, who have shown "100%" willingness to discuss solutions, he said, relief for those struggling to survive could be on the way.

"Maybe we'll delay payments of taxes, let people pay in different installments or … see if we can get the penalties out," Mr. Garcia told Miami Today. "I'm very concerned with commercial properties, all rental properties, and for owners of any kind of property, because the amount of people we have that are unemployed – how will they pay their rent? How will they pay their mortgage? It's a tremendous combination of difficulties we're going to have this year."

Mr. Garcia's preliminary certification of taxable values for the county, released this month, shows a year-over-year increase of 5.1% in property values. That includes more than $8 billion in new taxable value.

Like years before, much of those gains were driven by construction that "continues to dominate the real estate market" here, he wrote in the report.

But because state law requires property appraisers to base their assessments on property and market conditions on Jan. 1, tax rolls due in November will almost certainly not reflect the real situation most Floridians find themselves in as the coronavirus pandemic continues to ravage the state's top industries.

Florida has "faced the perfect storm of elevated Covid-19 cases and the subsequent collapse of the spring and summer tourism market, which curtailed home-purchase demand enough to keep a lid on home price gains over the coming year," a July 7 CoreLogic report said.

The financial services company projected a 6.4% year-over-year dip in values in the Miami-Miami Beach-Kendall area, whose properties it rated as “overvalued,” effectively erasing gains there and, most likely, elsewhere in the county.

“Everybody agrees we have a problem,” Mr. Garcia said. “We need to do something, and this is the right time to get some ideas in from all the property appraisers, present them to legislators and see what kind of legal ways we have to help people.”

In the meantime, property owners should do as much as possible to help themselves. That starts with getting one’s records and paperwork in order, he said.

Rental property owners, he said, should work with their accountants on personal finance reports that detail all costs, assets, rentals, vacancies and other pertinent information. They then should give the information to his office.

“Give information on people delaying rental payments, on commercial businesses that move away,” he said. “We’re talking about apartment, industrial and commercial. It’s also office rentals. A lot of people are working from home, and I don’t believe there will be a lot of people coming back to their office unless they deal with the public.”

While it’s possible that the market will rebound within the next two years, next year will a “completely new situation for us,” he said, as business here struggle to stay afloat.

“We’re navigating strange waters,” he said. “We have a lot of people unemployed, a lot of problems with the economy. The banks are working with most people on mortgages and offering [things] like, ‘These three months, you’ll pay at the end of the mortgage’ and other breaks to them, which is helping them a bit. [But] if we keep businesses closed, a lot of rentals are going to have problems.”

How Much Is a Hotel Worth?

In the case of property tax assessments in Florida, probably somewhat less than the county property appraiser assumes. A recent court decision invalidated the method used by many county property tax appraisers in Florida to develop "just" values for hotels.

The Background

Walt Disney Parks and Resorts successfully argued that the Orange County Property Appraiser improperly considered income from the business activities conducted on the premises in establishing the just value of the Disney Yacht & Beach Club Resort which includes restaurants, retail shops, a spa and convention center in addition to its 1,197 guest rooms.

Florida's Constitution requires annual reassessment to determine the "just" or fair market value of the "Real property" defined as land, buildings, fixtures, and all other improvements to land. Notably, real property specifically does not include personal property and "Intangible personal property" which includes all other forms of property where value is based upon that which the property represents rather than its own intrinsic value. [1] The Orange County Property Appraiser's staff, in common with most county appraisers, considers eight statutory factors in deriving just value, but places greatest reliance on the Income Approach. Resources available to county appraisers include access to sales tax returns. The Orange County Property Appraiser (Appraiser) also sends an annual income and expense survey to each of the county's numerous hotel properties.

Hotels are complex assets, combing real estate with an operating business that takes considerable marketing, management, and financial skill to operate successfully. In addition, an operating hotel includes a significant investment in personal property - the furniture, fixtures, and equipment, which includes everything from beds, to stoves, to computers. In general, when hotel properties are purchased as a going concern, investors /purchasers are focused on the overall EBITDA projected for the asset, any capital improvements necessary to achieve that EBITDA, their risk assessments and ROI requirements. Most hotel investors do not allocate yield between realty and non-realty components of the business in making their investment decisions, and most hotel mortgages are package loans which include the FF&E. Allocating the value among the various components is however critical in determining ad valorum taxes, which include real estate taxes, sales tax (on transfers of personal property included in a transaction) and documentary stamp taxes on transfers of real estate.

The Orange County Tax Appraiser used a methodology popularized by Steve Rushmore to remove the income attributed to the business and personal property components from the hotel's overall value. Briefly, the value associated with the management is deducted via a management fee, the value of a brand is attributed to the franchise fees and the value of the FF&E is deducted from the overall capitalized net income. [2] Disney argued that this approach, adopted by the county appraiser, underestimated the intangible assets associated with the property including the value of the brand/copyright/ goodwill, loyal customers, and an assembled workforce.

The Court's Analysis and Conclusions

The original trial court found that the Appraiser improperly considered income from business activities conducted on the property in establishing the just value of the property, and rejected the Appraiser's contention that the intangible assets identified by Disney did not qualify as intangible property. [3] The appeal court found that the Appraiser's methodology inappropriately included the value of Disney's intangible business assets in developing its assessment, because it did not provide for adjustments to the gross business income for intangible business value prior to deducting franchise and management fees. The court concluded that "the Rushmore Method ignores the fact that an intangible business value may be directly benefiting a business's income stream"[4] and found the "explanation of how the deductions for franchise and management fee expenses removed the entire intangible business value from Disney's income stream is unconvincing"[5]. The Florida Court also noted that a California court had similarly found that an assessment determined by the Rushmore Method had failed to exclude intangible assets in contravention of California law.(SHC Half Moon Bay v. County of San Mateo, 171 Cal. Rptr. 3d 893, 911) (Ct. App. 2014). The Florida Appeals Court also agreed that the space used to generate ancillary income - that is income from sales of food, beverage, retail merchandise and other services (such as the spa) - should be valued differently from the rooms operation. Although it disagreed with some technical aspects of Disney's capitalization of the comparable rental value of the restaurant, retail, and spa spaces, it seemed to agree that Disney's methodology was reasonable. [6] Ultimately, the Appeal Court has determined that the Property should be reassessed using a methodology consistent with the its opinion.

Implications

Since many of the county appraisers throughout Florida use the "Rushmore Method" to assess hotel properties, this decision has wide ranging implications for hotel properties in Florida, particularly full service properties and larger resorts, where rooms revenues represent a smaller percentage of the property's total revenues. The value of some comp services (airport shuttles, concierge services, free parking, luggage handling) offered to guests may be deductible in determining the ADR associated with the real property component of the operation. It is evident, at least in Florida and California, that taxable real estate values heavily reliant upon the Rushmore Method are vulnerable to appeal.

This ruling may also imply that properties that achieve above average results, though a combination of branding, management and service have some justification or arguing that they should not be penalized with higher property taxes for their superior operating performance.

Clearly intangible business value may be in for closer scrutiny in the lodging industry over the next several years.

[1] Chapter 199 Florida statutes [2] Rushmore, Stephen. In Defense of the "Rushmore Approach" for Valuing the Real Property Component of a Hotel". [3] Rick Singh, as Property Appraiser v. Walt Disney Parks and Resorts US, (Fla. 5th Dist. Ct. App. 2020) Pg. 8 [4] Ibid Pg. 11 [5] Ibid, pg. 12 [6] Ibid. 13 -16

A Property Tax Story: The Happiest Place on Earth Just Got a Lot Happier

The Florida Fifth District Court of Appeal has decided that the methodology utilized by the property appraiser to arrive at the market value for Disney's Yacht and Beach Club is flawed.

The Florida Fifth District Court of Appeal, in the case of Singh (Orange County Property Appraiser) v. Walt Disney Parks and Resorts, ultimately decided that the methodology utilized by the property appraiser to arrive at the market value for Disney's Yacht and Beach Club is flawed. This methodology, referred to as the "Rushmore method," can no longer be utilized in the state of Florida. This is a big win for hotels and resorts that have a significant amount of revenue that is generated by sources other than hotel rooms.

The Rushmore method has been a topic of debate in the appraisal world for years. It's also widely used by county/jurisdictional property appraisers around the country. Essentially, it utilizes ancillary/additional income from on-site revenue sources, such as restaurants, bars, retail stores/outlets, parking lots/garages, spas, meeting/convention space, etc., and includes it in the total revenue figure, along with the room revenue. A primary argument against utilizing the Rushmore method is that including this type of ancillary/additional income in the total revenue number would be including a business enterprise value component, which would overstate the market value of the property. For example, when attempting to establish the market value of a property for appraisal purposes that is utilized as a restaurant, the income generated from selling the food and drinks is not considered as the income factor. Rather, the income factor is established by what the real property (land, buildings, fixtures, and all other improvements to land) would rent for, established by competing, similar type properties in the market. This rental rate is typically shown as a rate per square foot of building area, say $25.00 per square foot of building area. In most instances, this rental rate per square foot of building area indicates much less of a revenue factor than the business sales figures. As such, the reduced income factor based on the rental rate per square foot of building area would indicate a reduced market value. Basically, this was the methodology employed by Disney.

Some states have judicially rejected the Rushmore method, and now Florida can be included in that group. As indicated by the appellate court opinion filed June 19, 2020 on this case, "the dispute in this case began in 2015, when Appraiser's tax assessment of the Property increased by 118% from the previous year's assessment."1 The trial court, in the case of Walt Disney Parks and Resorts US, a Florida Corporation, Plaintiff v. Rick Singh, as Property Appraiser, et al., Defendants, Case No.: 2016-CA-005297, concluded that the main reason for the increase in the property's market value from the previous year was that the property appraiser included ancillary income from the sale of food, beverages, merchandise, and other goods and services on the property. The appellate court reversed the trial court's assessment of the property value based on lack of evidence. However, it did uphold the trial court's decision to reject the assessment/valuation methodology utilized by the Orange County Property Appraiser to arrive at the market value of the real estate for the Yacht and Beach Club property. The trial court found that the property appraiser improperly considered income from the business activities conducted on the property in establishing the market value. The appellate court opinion states that "the

Rushmore method violates Florida law because it does not remove the nontaxable, intangible business value from an assessment."2

What does this mean? For certain hotels and resorts in Florida, most of whom have suffered greatly because of the COVID-19 pandemic, it could mean some much-needed financial relief is on the way, via reduced property taxes. This would certainly be the case in Orange County, other parts of the state, and possibly other parts of the country where many of these full-service and resort-type hotels exist.

1 Rick Singh, as Property Appraiser, Appellant/Cross-Appellee, v. Walt Disney Parks and Resorts US, Inc., Scott Randolph, as Tax Collector, Reedy Creek Improvement District, A political Subdivision of The State of Florida, and Leon Biegalski, et al., Appellees/Cross-Appellants. Case No. 5D18-2927.
2 Ibid.

Property values increase in Clay County

Property Appraiser Roger A. Suggs submitted the Certification of Taxable Value to the Clay County taxing authorities and the Florida Department of Revenue last week, reporting the value of county properties increased by more than $853 million.

The 2020 preliminary taxable value is estimated at approximately $12.2 billion, Suggs said. The preliminary taxable value is slightly higher than the estimate reported on June 1. The statutory assessment date for the 2020 assessment roll is Jan. 1. Therefore, the overall increase in value is a reflection of the upward direction the real estate market has taken during 2019. Although market values have increased, the assessed values of properties with an existing homestead exemption will be limited ('capped') at a 2.3% increase (excluding any additions or improvements) and non-homestead residential and commercial properties will be limited ('capped') at a 10% increase due to constitutional amendments passed by voters in 1992 and 2008, respectively. Taxable value is based on the market value minus differentials ('caps') and exemptions.

The taxing authorities have until Aug. 4 to notify the property appraiser of the 2020 proposed maximum millage rates, and the date, time and place of their respective public budget hearings. This information will be used by the property appraiser to prepare the Notice of Proposed Property Tax forms (TRIM notices), which will be mailed to all property owners in mid-August.

The Property Appraiser's office is closely monitoring Covid-19's impact on our community and the real estate market. As previously stated, the preliminary assessments were determined and certified based on market-derived variables as of Jan. 1. Therefore, any negative impacts remaining as of Jan. 1, 2021, will be reflected on next year's assessment roll.

Hillsborough Property Appraiser Seeks Property Tax Relief For COVID-19

Hillsborough County's property appraiser is proposing tax relief options for those affected by the coronavirus pandemic.

Bob Henriquez says Florida lawmakers should treat the virus as it would any natural disaster.

“COVID-19 is like a Category 5 hurricane struck the entire state," Henriquez said. "So I’m urging the legislature to give local property appraisers and local governments the ability to help taxpayers as they try to recover from this very difficult time.”

Henriquez has come up with a few approaches based on his experience as a former state representative and what he sees other states doing:

- An extension of property tax payment deadlines.
- Waiving fees for late filers
- Reducing a tax’s impact so that it corresponds to the number of days a business was closed due to emergency orders.

He also suggests the creation of a task force, including representatives of the real estate industry, to help the state legislature craft and implement relief

Disney Tax Ruling Could Save Hotels Millions in Taxes

A Court of Appeal ruled in a years-long lawsuit that Orange County’s property-tax assessment method – one used in other Fla. counties – is illegal under Fla. law.

ORLANDO, Fla. – Walt Disney World and the lodging industry lobby just won a sweeping legal victory that could save Disney and other big hotel owners millions of dollars in taxes.

Ruling in a years-long lawsuit between Disney and Orange County Property Appraiser Rick Singh, an appellate court determined that Singh’s office improperly inflated the value of Disney’s Yacht & Beach Club Resort, a luxury hotel with an annual property tax bill of more than $4 million.

But attorneys and appraisers say the decision, which was issued June 19, will reverberate far beyond that one hotel. That’s because the court declared the entire method that Singh had used to appraise the Disney property – a method that is widely used by other property appraisers – is illegal under Florida law.

Now, experts predict that Disney and other hotel companies, whose finances have been crushed by COVID-19, will seize on the ruling and use it to push for lower tax assessments on scores of other properties. Disney alone is already challenging the appraisals for more than 10 other hotels.

Those challenges could save the lodging industry – but cost cities, counties and school districts – millions of dollars a year in property taxes.

“It’s huge,” said Michael McElveen, a commercial appraiser in Tampa. “I would imagine every hotel in the resort area of Orlando will be filing that appeal.”

The Disney case dates back more than five years, when Singh, a Democrat who was first elected property appraiser in 2012, brought in new appraisers to re-evaluate different classes of property. They concluded that some of those properties – including resort-style hotels, like the kind found at Disney World and Universal Orlando – had been under-assessed under Singh’s Republican predecessors.

Singh’s staff redid the values for a number of hotel properties using something known as the “Rushmore” method. It’s named after an author of appraisal textbooks, and it’s used by many property appraisers around the country – including in many Florida counties – though there can be variations in how and when the technique is applied.

“The majority of counties rely upon some version of it, depending on the type of hotel at issue,” said Loren Levy, an attorney who represents a number of county property appraisers, including Osceola County’s.

Under Singh, the new approach led to some dramatically higher assessments. The assessed value of Disney's Yacht & Beach Club, for instance, more than doubled, to nearly $340 million.

So Disney sued, arguing that Singh's office overstated the value of its hotel property by illegally including the value of intangibles, like the Disney brand. Two industry groups that Disney helps fund – the Florida Restaurant & Lodging Association and the Central Florida Hotel & Lodging Association – wrote legal briefs in support of the company.

Though it took years to play out, the Fifth District Court of Appeal ultimately agreed.

But the appellate court went much further than simply addressing Singh's appraisal of the Yacht & Beach Club. It declared – unequivocally – that the Rushmore method itself is illegal.

"Rushmore is essentially dead for use by property appraisers," said Jennifer Dixon, an appellate attorney at the Lowndes law firm who represented the Central Florida Hotel & Lodging Association in the case.

The ruling has sent shockwaves through appraiser offices. Property taxes are the largest source of revenue for cities, counties and school districts, and hotels are big property taxpayers. Local governments are already struggling with plummeting revenues from other sources, like sales and hotel taxes, because of the COVID-19 pandemic and the recession it has caused.

The Disney opinion will be powerful ammunition for any hotel that challenges its own tax appraisal.

"I would expect that the hotel owners will emphasize the scope of the decision when challenging assessments," Levy said.

At a minimum, Disney expects to see reductions on its own hotels. "We are pleased that the court concluded that the method used by the property appraiser violated Florida law," Disney spokeswoman Jacquee Wahler said in a prepared statement. "We look forward to a reassessment of our properties consistent with Florida law and the court of appeal's ruling."

The next step is up to Singh. He could ask the appellate court for a rehearing in the hope that it might narrow its decision or try appealing to the Florida Supreme Court, which has become more conservative under recent appointments by Republican Gov. Ron DeSantis.

Beth Watson, a spokeswoman for Singh, declined to say what the agency will do next. She said Singh's office remains "confident" in its appraisal practices – but acknowledged that it was alarmed by the potential reach of the court's ruling.

"We are concerned about the broad nature of the ruling on the use of the Rushmore method," Watson said. "While the DCA may deem it inappropriate for the Disney hotels at issue, their ruling could impact thousands of properties in Florida."

The Disney ruling comes one year after another big business – Darden Restaurants, the Orlando-based parent company of Olive Garden, LongHorn Steakhouse and other chains – also won a precedent-setting property-tax opinion in a case involving Singh.

In that case – which centered on the value of the computers, furniture and other equipment at Darden's corporate headquarters – the 5th DCA issued an opinion that limited a property appraiser's discretion in determining values. Robert Goldman, a corporate tax attorney at the law firm Dean Mead, said at the time that the decision was "a huge win for taxpayers who contest property tax assessments."

And those rulings follow a years-long effort by Florida’s business lobby to reshape both the laws that govern the state’s property tax system – and the courts that interpret those laws.

In 2009, for instance, in response to lobbying from big-business groups like the Florida Chamber of Commerce and Associated Industries of Florida, the Republican-controlled Florida Legislature passed a law making it easier for businesses to challenge their property tax assessments in court.

At the same time, businesses have been influencing the selection process for judges. Two of the three appellate court judges who decided the Disney case – both of whom were appointed by former Gov. Rick Scott – were nominated by a screening committee whose members included one of Disney World’s top in-house attorneys.

Orange County property appraiser asks court to reconsider ruling that could save Disney and other hotel owners millions in taxes

Orange County Property Appraiser Rick Singh wants an appellate court to reconsider a ruling that could save Walt Disney World and other hotel companies millions in property taxes.

Singh’s office on Thursday asked the Fifth District Court of Appeal to hold another hearing in a years-long legal battle with Disney over the assessment of Disney’s Yacht & Beach Club Resort, a luxury hotel with an annual property tax bill of more than $4 million.

The request comes two weeks after the court ruled that Singh’s office had improperly inflated the value of the Disney hotel, where the tax assessment more than doubled in 2015 to nearly $340 million.

But the court’s June 19 opinion reached far beyond the Yacht & Beach Club. In its ruling, the court also declared the method Singh’s office used to appraise the Disney hotel — which many other appraisers also use to value hotels — illegal under Florida law.

Attorneys and appraisers say the sweeping ruling could help other hotels challenge their own tax assessments. Disney alone is already contesting the appraisals of more than 10 of its other hotels.

Singh isn’t asking the court to revise its decision, which calls for his office to reappraise the Yacht & Beach Club. But he wants the court to reconsider whether it really means that the appraisal method — known as the “Rushmore” method, after the author of appraisal textbooks — is illegal for all hotels.

Hillsborough property appraiser proposes Covid-19 tax relief measures, task force

His proposal includes reducing the tax impact equivalent to the number of days a business was closed due to government orders. Hillsborough County Property Appraiser Bob Henriquez has proposed some property tax relief measures in response to the Covid-19 pandemic.

“Florida property taxes are based on values as of Jan. 1, which, of course, was prior to the Covid-19 shutdown," Henriquez said in a statement. “Nevertheless, property owners in Hillsborough County and across the state were impacted by the event. We need to think in terms of how to provide relief to those affected. Ultimately, that relief needs to come from the state legislature.”

His proposals include:

- Reducing the tax impact equivalent to the number of days a business was closed due to government orders. Similar measures have been used for hurricanes.
- Extending the due date for the payment of property taxes

- Waiving penalties and interest for late-filed property tax payments

Henriquez, who served four terms as a state representative before being elected as property appraiser in 2012, also proposed a task force to discuss property tax relief measures and present them to the state legislature. The task force would be made up of all impacted parties, including government officials and representatives of the real estate industry.

Disney World Wins Legal Battle Over Property Taxes

The Walt Disney World Resort has won its latest legal battle against Orange County Property Appraiser Rick Singh. This victory will save the company–and potentially Florida's entire hotel industry–millions of dollars in property taxes.

According to the Orlando Sentinel

Walt Disney World and the lodging industry lobby just won a sweeping legal victory that could save Disney and other big hotel owners millions of dollars in taxes.

Ruling in a years-long lawsuit between Disney and Orange County Property Appraiser Rick Singh, an appellate court determined that Singh's office improperly inflated the value of Disney's Yacht & Beach Club Resort, a luxury hotel with an annual property tax bill of more than $4 million.

But attorneys and appraisers say the decision, which was issued June 19, will reverberate far beyond that one hotel. That's because the court declared the entire method that Singh had used to appraise the Disney property — a method that is widely used by other property appraisers — is illegal under Florida law.

The Sentinel states that Disney has been fighting Singh on this particular case since he was elected property appraiser in 2012 and began bringing in new appraisers to reevaluate properties at places such as Disney World and Universal Orlando Resort believing his predecessors under-assessed many of the properties. Earlier this Summer, we reported that Disney filed 12 lawsuits against what they believe to be excessively high appraisals of Disney World property just in the second week of June 2020 alone.

Singh was using a method called "Rushmore." The Sentinel reports, "Under Singh, the new approach led to some dramatically higher assessments. The assessed value of Disney's Yacht & Beach Club, for instance, more than doubled, to nearly $340 million."

Disney sued Singh, and the Florida Restaurant & Lodging Association and the Central Florida Hotel & Lodging Association each wrote legal briefs in support. The Fifth District Court of Appeals has now declared Singh's entire method of appraising itself illegal.

This ruling has the potential to save Florida's lodging industry millions of dollars in property taxes.

"It's huge," said Michael McElveen, a commercial appraiser in Tampa told the Orlando Sentinel. "I would imagine every hotel in the resort area of Orlando will be filing that appeal."

"We are pleased that the court concluded that the method used by the property appraiser violated Florida law," Disney spokeswoman Jacquee Wahler said in a prepared statement. "We look forward to a reassessment of our properties consistent with Florida law and the court of appeal's ruling."

The Walt Disney World resort is still on track to begin reopening its theme parks with the Magic Kingdom and Disney's Animal Kingdom on July 11, followed by EPCOT and Disney's Hollywood Studios on July 15.

GEORGIA

Springfield Proposes 24.5% Property Tax Increase

The City of Springfield recently announced that it plans to raise property taxes by 24.54 over the rollback millage rate.

Citing a static millage rate for the last five years, the mayor and council said in a recent press release that the 4.80 millage rate will increase for the 2020 tax digest to a millage rate of 5.80 mills. If approved, it will be the first increase since the 2014 tax digest. A tax rate of one mill represents a tax liability of one dollar per $1,000 of assessed value, so for every $100,000 of the fair market value of a house, the tax rate in Springfield would increase from $192.00 to $232.00.

A person with a $100,000 home would see an increase of $40. A person with a $300,000 home would see a $120 increase, and so on.

The City said the requirement to increase taxes comes after the most recent budget as adopted by mayor and council reflected increased expenditures.

When the total digest of taxable property is prepared, Georgia law requires that a rollback millage rate must be computed that will produce the same total revenue on the current year's digest that last year's millage rate would have produced had no reassessments occurred.

When a millage rate higher is proposed at a rate higher than the rollback millage rate, local governments are required to hold public hearings prior to adoption by the council so that citizens and business owners may ask questions and express their concerns.

The final public hearing on this tax increase to be held at the City of Springfield Council Chambers, 130 South Laurel Street, Springfield, Georgia on August 11, 2020 at 6 p.m.

How to Figure Your Own Tax: The assessed value (40 percent of the fair market value) of a house that is worth $100,000 is $40,000. In a city where the millage rate is 4.8 mills the property tax on that house would be $192.00 for every $100,000 of the fair market value, so 5.8 mill multiplied by 40 (assessed value multiplier) is $232.00 for every $100,000 of fair market value.

LOUISIANNA

Coronavirus might help lower some Baton Rouge-area property taxes

The coronavirus might cause Baton Rouge-area tax assessors to cut some businesses and homeowners a break on their property taxes — which is good news for them, but bad news for some parts of the city-parish budget.

Property taxes make up about 9% of the current general fund budget, or about $28.7 million. But some specific agencies — like the library system, mosquito and rodent control, Downtown Development

District and Council on Aging — are funded by their own dedicated property taxes, which combined are worth more than $100 million.

The more generous assessors are with granting property tax breaks, the bigger the budget hit will be.

"Right now it's a hard thing for them to figure out, in terms of what (property) values will be affected," said Chief Administrative Officer Darryl Gissel. "We're concerned, but our percentage of property tax revenue is low. It'll mostly affect the school board and sheriff more."

In Louisiana, assessors establish the property values upon which tax bills are calculated. The pandemic hit in the quadrennial reassessment year, when assessors across the state take fresh stock of property values and new growth.

Recently, tax assessors in the Baton Rouge region announced plans to allow business owners to request reductions in their 2020 assessments if they can prove they've sustained economic damage from the coronavirus. Some assessors have promised the same for homeowners.

East Baton Rouge Assessor Brian Wilson says he's still evaluating how he could legally offer reductions to homeowners. And Wilson previously said his office will deal with assessment reductions for business owners on a case-by-case basis.

Assistant Finance Director Angie Savoy said department heads and parish agencies have already been asked to prioritize their spending requests for 2021 with the possibility of budget cuts. The mayor's office is expected to deliver its proposed 2020 spending plan to the Metro Council in early November.

"We have not received the 2020 reassessment information from the Assessor to forecast future property tax revenues," Savoy said in an email. "The Assessor's Office informed us that they hope to have this information to us by the end of the July, at which time we will be able to determine future revenue projections for property taxes."

While some individual departments are closely monitoring property tax changes, the biggest problem for the broader city-parish government remains sales taxes. Efforts to halt the spread of coronavirus forced many businesses to temporarily close, which meant much fewer sales to tax.

The city-parish expects a shortfall of at least $23 million in sales taxes. Gissel said they're banking on reimbursement from the federal coronavirus relief legislation approved in March to shore up a lot of those shortfalls.

MAINE

Maine leads New England for economically vulnerable college towns

As schools decide whether to reopen campuses this year, the economic impact will ripple through the communities in which they are based.

When Tamika Adjemian opened her restaurant on Main Street in Unity in December, she saw it becoming a part of the social life for the roughly 700 students at Unity College, less than a mile away.

But that vision for Unity Kitchen dissolved this spring when the coronavirus pandemic spread around the country and college campuses, including Unity's, shut down and sent students home.

"All of that is gone," Adjemian said of her hopes for a busy student clientele. "We were hoping to be a robust part of that scene and I have no idea how it will go in the fall. I don't know what winter will bring. That's a serious concern."

That worry abounds in other Maine college towns, as well. A report issued in June by the Federal Reserve Bank of Boston found that Maine leads the region in terms of the number of municipalities that are heavily dependent on colleges and universities for their local economies. In Penobscot County, home to the University of Maine in Orono, for example, more than 10 percent of the local jobs were in higher education as of 2018.

The report said 57 communities across New England are highly dependent on a college or university for employment, including 19 in Maine. And six of the Maine schools in those towns – more than in any other New England state – are financially vulnerable because of declining enrollment and a low endowment-to-expense ratio, it said.

Officials at the Boston Fed declined to identify the six communities for fear of stigmatizing them, and it's possible that an analysis based on endowments could be misleading, because public colleges and universities have lower endowments and a greater reliance on state funding than private schools.

The report said U.S. colleges and universities have received $14 billion in aid from the federal CARES Act, but that by late April, costs to higher education institutions resulting from the pandemic exceeded that amount.

In Maine, the University of Maine System announced last week that it will reopen its campuses this fall, but Unity College and Bowdoin College in Brunswick have said they will switch to remote learning to reduce the chance of students being exposed to the coronavirus. The UMaine System also plans to close its campuses at the Thanksgiving break and conduct the final weeks of the fall semester online.

The report noted that reopening in the fall carries higher costs and risks for the institutions, ranging from the cost of regularly testing students, faculty and staff to having to rent rooms in local hotels because of the need to reduce capacity at residence halls.

And there are a great deal of unknowns that will only be answered once the campuses are reopened, the Boston Fed said.

"In the absence of a COVID-19 vaccine, life in college towns across New England and the country will be different, but just how different remains unclear," the report said.

In Orono, a closed UMaine flagship campus would have had an impact both "sudden and severe," said Town Manager Sophie Wilson.

She said businesses that rely on student customers would suffer, and that could have rippled into difficulties collecting property taxes, both from commercial landlords and those that rent apartments to students living off campus.

Wilson said Orono has a small budget of about $10 million for a town of 11,000, and that's due in part to the presence of the university. Although the college property is exempt from taxes, the university pays about $4.5 million to the town for emergency medical, firefighting, sewer and other services.

Wilson said the town and UMaine have a good relationship, but she worried that the university would want to renegotiate its arrangements with the town and reduce its payments if UMaine had decided to stick with remote learning for the fall semester.

The university and its students are the primary economic force in the town, Wilson said.

That economic force is even stronger in a smaller town like Unity, said Penny Picard Sampson, who chairs the town's board of selectmen.

She noted that Unity is a service center in western Waldo County, so many drugstores and other retailers in town might not take a huge hit from the closed campus. She also said apartments and other rentals might be affected, but there's a bit of a housing shortage in town that should be eased by the lack of college students in the fall.

But Sampson also noted that the Common Ground Country Fair, a popular fall festival put on by the Maine Organic Farmers and Growers Association, is being canceled as an in-person event in Unity this year, another economic blow to the community.

"We've got three whammies," she said. "COVID, Common Ground and the college, the three C's."

The town doesn't have any payment arrangement for services in place with the college, Sampson said, but the college does have some properties that are on the tax rolls. Unity College also had some service days for its students in which groups would clean headstones in the cemetery, work at a nearby bird rehabilitation center or fix up walking trails in town, she said. That kind of free labor would be costly to replace.

And, she said, college students make up one-quarter to half of the volunteers with Unity's fire department.

"We're short on (fire department) manpower during the winter break and summer, and now we will be short the rest of the year as well," Sampson said. The board of selectmen will meet soon to discuss the impact of the college closing, she said.

In Brunswick, the decision to close the Bowdoin College campus this fall will have an impact, but perhaps not as severe as in smaller towns such as Unity, said John Eldridge, manager of the town of about 15,000 residents.

"Obviously, the college is an integral part of the community," Eldridge said, but the campus closing is not expected to have a significant impact on town finances. The college pays for a few services in town, which he called "minimal," and also makes some contributions to the town in lieu of taxes, he said, but that's not expected to change.

Eldridge said the lack of students, parents and visitors likely will hurt some local businesses, such as restaurants, but so will the decision to cancel the Maine State Music Theater's summer season and the annual air show in town.

"You just can't suffer the kinds of economic losses that some of these businesses are suffering and expect them to survive long-term," Eldridge said. But he said worries over the college's long-term future would be overblown.

"Bowdoin is part of the mix of the economic well-being of Brunswick," he said, "and Bowdoin is probably better positioned than most."

Adjemian, the restaurant owner, said she's taking steps to help Unity Kitchen adapt to the new reality. Originally, she saw it as a coffee shop in the morning, but that business dried up when restaurants had to close to indoor dining. Still, she's doing more dinner takeout business than she anticipated.

“That’s a different focus than avocado toast and coffee in the morning,” Adjemian said, so business hours have shifted to a slightly later opening in the morning and staying open through the dinner rush in the afternoon and evening.

Also, she redesigned a section of the restaurant to sell local food and is getting good support for a fundraising campaign to buy a larger refrigerator to increase the mix of products she can offer.

“This has been quite an interesting time for us,” Adjemian said, noting that tourist business was surprisingly strong through June, and Unity College plans to hold its 2020 commencement on Aug. 1, which will bring some more people into town.

But the Boston Fed report said the health of the colleges and universities bear watching because they play an outsize economic role in their host communities.

“While both short-term and long-term disruptions to higher education could affect the entire region, these communities likely would feel the largest impact, because the local economies rely so heavily on these schools that may be less equipped to withstand the potential obstacles ahead,” the report said.

MICHIGAN

Michigan Supreme Court slams door on counties keeping excess profits from tax home foreclosures

The Michigan Supreme Court ruled unanimously Friday that counties can’t additionally profit from tax-foreclosed homes without justly compensating the property owner.

The court found that withholding any surplus from tax-foreclosure sales that exceeded the amount owed constituted an “unconstitutional taking without just compensation.”

Since the state’s law on the matter is derived from English common law, the court journeyed back to the Magna Carta in its decision.

“Just as the Magna Carta protected property owners from uncompensated takings, it also recognized that tax collectors could only seize property to satisfy the value of the debt payable to the Crown, leaving the property owner with the excess,” Justice Brian K. Zahra wrote in the opinion.

Zahra wrote that the term “forfeiture” in the General Property Tax Act only allows a defendant to seek foreclosure, and doesn’t allow the governmental unit all rights and titles to the property.

“These fundamental principles – that the government shall not collect more taxes than are owed, nor shall it take more property than is necessary to serve the public – protect taxpayers and property owners alike from government overreach and have remained a staple in Michigan’s jurisprudence,” Zahra wrote.

The Oakland County Circuit court had previously ruled against the plaintiffs, finding that “property properly forfeited under the General Property Tax Act is not a barred taking.”

The plaintiffs appealed.

The Court of Appeals ruled against the plaintiffs again in 2017, citing Bennis v. Michigan, which focused on rules for forfeited property due to criminal behavior.

“The Court’s holding in Bennis focused narrowly on forfeited property that was used as an instrumentality for criminal activity and the government’s interest in deterring illegal activity. In this case, plaintiffs did not use their properties for illicit purposes,” Zahra wrote.

That’s welcome news for Uri Rafaeli, whose property was seized over an initial tax debt of $8.41, which augmented to $285.81 after interest, penalties and fees.

Oakland County sold the property for $24,500 – more than $35,000 less than Rafaeli paid for it – and then pocketed $24,214.

Rafaeli left empty-handed.

Andre Ohanessian owed about $6,000 in unpaid taxes, interest, penalties and fees from 2011 on his 2.7 acre property.

The county auctioned his property for $82,000 and kept the $76,000 profit.

“We are thankful that the court today vindicated Uri Rafaeli and Andre Ohanessian’s property rights,” Christina Martin, an attorney representing the plaintiffs on behalf of the Pacific Legal Foundation.

“This decision will protect people across Michigan by prohibiting county governments from stealing from struggling property owners,” Martin said.

“No one in Michigan should lose the entire equity in their home or land for falling behind on their property taxes. We will continue the fight to help other vast numbers of people whose nest eggs have been robbed by this abuse of tax foreclosure law," Martin continued. "Today's decision sends a message across the country that this kind of abuse should not be tolerated in the United States any longer.”

Michigan Supreme Court Rules Government Can't Seize Entire Value of Home Over Property Tax Delinquency Worth $8.41

The Court unanimously ruled such a tax "forfeiture" qualifies as a taking for which compensation must be paid

In an important decision, the Michigan Supreme Court unanimously concluded that a county government many not seize the entire value of a property in order to collect $8.41 in delinquent property taxes. In Rafaeli, LLC v. Oakland County, the court concluded that such a tax "forfeiture" qualifies as a taking under the Michigan state constitution, and the government therefore must pay the owners compensation equal to "any proceeds from the tax-foreclosure sale in excess of the delinquent taxes, interest, penalties, and fees reasonably related to the foreclosure and sale of the property—no more, no less." The court's ruling is an important victory for constitutional property rights—and also for basic decency and fairness.

The figure in the previous paragraph is not a typo. Oakland County really did seize an entire rental house, sell it, and kept all the money for itself, over a mere $8.41 in unpaid taxes. That's $8.41, not $841 or $8410. The Pacific Legal Foundation, which represented the property owners in the case, has a helpful description of the facts:

In 2014, Oakland County, Michigan foreclosed on a home owned by Uri Rafaeli's business—Rafaeli, LLC—over an $8.41 tax debt. The County sold the property for $24,500, and kept profits. Ditto for Andre Ohanessian, when the County seized and sold his property for $82,000, and pocketed every penny left over from the $6,000 tax debt. While most states refund the surplus, Michigan is among a handful of states that allow property theft to fill government coffers. PLF asked the Michigan Supreme Court to strike down this bureaucratic theft and restore our clients' constitutional rights.

In 2011, Uri Rafaeli's business—Rafaeli, LLC—purchased a modest rental property in Southfield, Michigan for $60,000. Rafaeli inadvertently underpaid the property's 2011 taxes. He paid his 2012, 2013 taxes in full. After learning he owed money for 2011, Rafaeli tried to pay the full 2011 tax debt in January, 2013. But he mistakenly did not factor in interest growing on the debt, and underpaid by $8.41. The County foreclosed on the property, sold it for $24,500, and pocket the massive windfall at Rafaeli's expense.

Similarly, Andre Ohanessian owed $6,000 in taxes, penalties, interest, and fees when the County foreclosed and sold his property for $82,000. As with Rafaeli, the County kept all profits from the sale, rather than reimbursing Ohanessian.

As the PLF summary notes, the Rafaeli case (which involved the $8.41 delinquency) as paired with a less extreme, but still egregious, case where the County seized the entire value of a property worth $82,000 in order to pay off a $6000 delinquency.

The majority opinion, joined by six of the seven justices on the Court, concluded that the seizure is a taking of private property requiring just compensation for the following reasons:

[E]arly in Michigan's statehood, it was commonly understood that the government could not collect more in taxes than what was owed, nor could it sell more land than necessary to collect unpaid taxes.

Further, in the context of eminent domain, it was axiomatic that the government shall take no more property than necessary for the particular public use for which the taking was done….

[T]hese fundamental principles—that the government shall not collect more taxes than are owed, nor shall it take more property than is necessary to serve the public—protect taxpayers and property owners alike from government overreach.

The majority opinion carefully traces these limitations on government's power to seize property to pay delinquent taxes all the way back to the Magna Carta and early English common law. The owner's entitlement to the residual value of the property is, accordingly, a property right protected by the takings clause of the state constitution, and perhaps also by the federal Takings Clause of the Fifth Amendment, though the court did not rule on the basis of the latter, and carefully noted that "we must keep in mind that Michigan's Takings Clause has been interpreted to afford property owners greater protection than its federal counterpart when it comes to the state's ability to take private property for a public use under the power of eminent domain."

People who are not experts in takings law can be forgiven for thinking that all of the above should be obvious. Of course it is unconstitutional for the government to seize the entire value of a $24,000 home to pay off $8.41 in delinquent taxes. Seizing the entire value of an $82,000 house to pay off a $6000 delinquency is only slightly less awful.

Reaching these obvious conclusions shouldn't require a state supreme court decision with almost 100 pages of majority and concurring opinions! Moreover, a reasonable local government should never have tried to seize a house over a mere $8.41 in the first place—even if its lawyers advised them they might be able to get away with it. It's the kind of case that gives lawyers —and taxes—a bad name.

I sympathize with such reactions. In fairness, however, the legal issue in the case is not as simple as it should be, because the seizure of the property was legally classified as a tax "forfeiture." In its ill-advised 1996 ruling in Bennis v. Michigan, the US Supreme Court ruled that civil asset forfeitures do not qualify as takings, and therefore don't require compensation under the Takings Clause of the Fifth Amendment. There are similar rulings under the takings clauses of many state constitutions. The lower court ruling in favor of the government relied heavily on Bennis.

The Michigan Supreme Court distinguishes Bennis and other similar decisions on the following grounds:

[T]he panel majority erred by relying on Bennis v Michigan, a case involving civil-asset forfeiture, to conclude that no taking occurred in this case.

First, the [state General Property Tax Act] makes clear that "forfeiture" simply permits defendants to seek a judgment of foreclosure. Forfeiture does not affect title, nor does it give the county treasurer… any rights, titles, or interests to the forfeited property. Therefore, we reject the premise that plaintiffs "forfeited" all rights, titles, and interests they had in their properties by failing to pay their real-property taxes.

Second, Bennis is distinguishable because the purpose of civil-asset forfeiture is different than the purpose of the GPTA provisions at issue here. Bennis recognized that civil-asset forfeiture "serves, at least in part, to punish the owner" of property… But the GPTA is not punitive in nature. Its aim is to encourage the timely payment of property taxes and to return tax-delinquent properties to their tax-generating status, not necessarily to punish property owners for failing to pay their property taxes……

We conclude that Bennis is distinguishable and provides us little guidance as it relates to plaintiffs' takings claim. The Court's holding in Bennis focused narrowly on forfeited property that was used as an instrumentality for criminal activity and the government's interest in deterring illegal activity. In this case, plaintiffs did not use their properties for illicit purposes. They simply failed to pay their property taxes, which is not a criminal offense.

These are reasonable distinctions. But it's worth noting that civil asset forfeiture laws in many states do not require the government to prove that the owner had actually committed a crime, or even charge her with one. They therefore often allow law enforcement agencies to seize property without compensation even if the owner did nothing wrong, and had no idea that their property might have been used for an illicit purpose. Like excessive tax forfeitures, asset forfeitures disproportionately victimize the poor, small businesses, ethnic minorities, and others who may lack the knowledge and resources to conduct a prolonged legal battle against difficult odds.

Thus, while the majority is right to emphasize the distinction between forfeiture laws intended to deter and punish "criminal activity" and those whose purpose is only to secure payment of delinquent taxes, the difference between the two is not as great as it may at first seem. Indeed, in the tax forfeiture case, the government is at least required to show that the owner really is delinquent on his or her taxes before seizing any property. By contrast, civil asset forfeiture can be used to seize property even if the owner was never shown to have violated any laws.

To my mind, all of this underscores the wrongness of Bennis and the need for tighter enforcement of constitutional constraints on civil asset forfeiture. Important progress has been made on that front in recent years, but not enough. The Michigan Supreme Court have ruled that Bennis' interpretation of the federal Takings Clause doesn't govern Michigan's state Takings Clause, which—as they noted—offers stronger protection for property rights. I can understand, however, that they may have preferred not to make such a far-reaching decision in a case where a narrower ruling limited to tax forfeitures was possible.

In a concurring opinion, Justice David Viviano agreed with the conclusion that a taking had occurred, but took issue with the majority's reasoning, and also with its analysis of how much compensation is owed. I disagree with some of his reasoning. But I do agree on the fundamental point that the majority took an overly narrow view of the scope of the owners' property rights:

[T]he majority's focus on the surplus proceeds as the relevant property, and thus the postsale retention as the taking, produces puzzling results. Because "a property owner has a claim for a violation of the Takings Clause as soon as a government takes his property for public use without paying for it",… under the majority's theory, no constitutional issues occur until the surplus proceeds are retained. It does not matter that once title has vested in the government without chance of redemption, the taxpayer's property—his or her equity—has been taken. Consequently, the majority's view of the case would seemingly be that if the property does not sell at auction and is simply transferred to a governmental unit, the taxpayer is out of luck: no proceeds, let alone a surplus, have been produced or retained by the government…. Perhaps worse still, governmental units have numerous opportunities to purchase the property for the minimum bid, i.e., for the debt (and costs), and thus obtain it for an amount that will usually be much less than fair market value. Yet in those cases, too, because no surplus would result, the majority leaves the taxpayer without a remedy. The better view, under the law described above, is that the property taken is the taxpayer's equity and that this occurs when title vests in the government with no opportunity for redemption.

As Viviano explains, the property right lost by the owner is not simply a right to the proceeds of a foreclosure sale, but the "equity" he holds in the property as a whole. This in turn means that he or she is owed compensation equal to the fair market value of that right (minus the value of the tax delinquency and related fines and expenses), not merely whatever money a foreclosure auction brings in over and above the tax delinquency.

Justice Viviano is also right to worry that, under the majority's approach, the state or local government conducting the auction will have an incentive to take low-ball bids or otherwise proceed in a way that denies the owner the full value of the land in question. After all, they have little if any incentive to try to maximize profits in the way that an owner selling her own property would typically do. To the contrary, the county's goal will usually be to get the money it is entitled to, as quickly as possible. In the process, they could easily shortchange the owner.

For these reasons, the Rafaeli case will not end all tax forfeiture shenanigans in Michigan. In addition, as the majority notes, courts in several other states have ruled that their local governments are entitled to the full value of any property seized through a tax forfeiture, even if it is greater than necessary to pay off the tax delinquency in question. The Michigan decision doesn't apply to these other jurisdictions. While most states already refund the surplus from a tax foreclosure sale, there are some that do not.

Despite these limitations, the Rafaeli decision is an important victory for property rights, and a valuable tool for curbing abusive tax forfeitures. Hopefully, courts in other states with similar policies will begin to follow Michigan's example. They would also do well to adopt Viviano's analysis of the property rights at stake, rather than the majority's.

NEW JERSEY

Restoring property tax break would benefit almost one-third of New Jersey taxpayers, study says

The House coronavirus stimulus bill's provision to restore the full deduction for state and local taxes would benefit 3 in 10 New Jersey taxpayers, a higher percentage than any other state.

That's according to a recent report by the Institute for Taxation and Economic Policy, a progressive research group. The report also found 80% of those in the state who would benefit had an average income of $216,000 or less.

The report said that 30% of New Jersey taxpayers would see lower taxes if the Republican tax law's $10,000 limit on deducting state and local income, property and sales taxes was removed, as included in the House-passed $3 trillion stimulus package.

Connecticut was second with 27% and Maryland third with 25%.

The need to pass another stimulus bill has increased as the number of coronavirus cases continues to spike, stalling efforts to reopen businesses closed to slow the spread of the coronavirus.

The House bill, passed over near-unanimous Republican opposition, would provide $500 billion in aid to state governments and $375 billion for municipalities, extend the extra $600 a week federal unemployment benefit through January 2021, and provide another $1,200 per person stimulus check, up to $6,000 per household.

It also would suspend the $10,000 deduction cap for two years.

President Donald Trump has threatened to veto the House legislation. He renewed his call Sunday for a payroll tax cut, which would benefit corporations but provide no help to the 17.8 million Americans without jobs, including 1.4 million in New Jersey.

Trump said on Fox News Sunday that he may not sign a stimulus bill without that tax reduction.

"I'll have to see but yes, I would consider not signing it if we don't have a payroll tax cut," he said.

Trump and Senate Majority Leader Mitch McConnell, R-Ky., also have called for protecting businesses that reopen from being sued, supporting a long-standing goal of the business community to limit lawsuits for allegations of wrongdoing.

"We do need protections because businesses are going to get sued just because somebody walked in," Trump said on Fox. "Don't know where this virus comes from. They'll sit down at a restaurant. They'll sue the restaurant, the guy's out of business."

Gov. Phil Murphy has used his coronavirus press briefings to lobby for removing the $10,000 property tax deduction cap, particularly onerous in a state with the nation's highest property taxes.

Like New Jersey, most of the states affected the most by the deduction limit send billions more to Washington than they receive in services.

The House voted to repeal the cap last year, making up the difference by raising taxes only on those making at least $518,400 annually, but Senate Republicans refused to take it up.

"During this pandemic, New Jerseyans and our communities are being squeezed in unprecedented ways," said Rep. Bill Pascrell, a member of the tax-writing House Ways and Means Committee. "Communities fighting COVID are being bled into bankruptcy and may soon have to slash funding to schools, firefighters, and first responders."

Removing the cap "would be coronavirus relief not only for countless middle-class New Jerseyans but our cities and towns too so they can keep critical services," said Pascrell, D-9th Dist.

The ITEP report found that 1.5 million of the 1.9 million New Jerseyans who would pay less in federal taxes if the cap was lifted had an average annual income of $218,000 or less.

And the deduction made it harder for state officials to raise their taxes on higher-income residents to fund services for everyone else because the wealthy no longer could write off part of the increase on their federal returns. State Senate President Stephen Sweeney, D-Gloucester, cited the cap in opposing Murphy's attempts to raise state income taxes on millionaires.

With the exception of Maryland (because so many federal agencies are located there due to its proximity to Washington, D.C.), the states that would most benefit from lifting the cap are the ones with the biggest gap between the federal taxes they pay and the federal support they receive.

In addition, New York and New Jersey are among the five states hardest hit by the coronavirus. So, too, was California, where 19% of its taxpayers would get a federal tax break if the deduction cap was lifted.

NEW YORK

NYC Property Tax System Upheld

An organization challenged New York City's property tax system as unfair, unconstitutional and discriminatory. Tax Equity Now NY LLC, an association of property owners and renters, filed a lawsuit challenging the New York City property tax system. The owners and renters alleged that the City's property tax system was unfair and results in racial discrimination. The association made several claims: the owners of one-, two- and three-family homes pay too little in taxes as a result of caps and low percentage valuations; condominium and cooperative owners pay too little because the units are valued as if they are rental properties; and that the condominium property tax abatement program is arbitrarily applied. The association also claimed that the New York City property tax system violated the Federal Fair Housing Act because it disproportionately taxes properties in minority communities at higher rates.

The Appellate Division, First Department, rejected the owners and renters complaint, ruling that the New York City tax system, as applied, was rationally related to legitimate government purposes. For example, temporary property tax abatements to condominium or cooperative units was intended to resolve an apparent inequity between condominium/cooperative owners and owners of one to three family homes, and to encourage ownership of apartments. Condominium and cooperative owners generally pay much higher taxes than comparably priced family homes.

The Appellate Division also rejected the owner and renters' racial discrimination claim. The Appellate Division found there was not a causal connection between the New York City property tax system and any racial disparities in availability of housing, nor was there a causal connection between the tax system and the continued segregation of New York City neighborhoods.

Tax Equity Now NY LLC v. City of New York, 2020 N.Y. Slip Op. 01401 (U)

New York's Tax Cap Below 2 Percent

Property tax increases will be limited to a 1.56 percent increase for local governments in New York amid a pandemic-induced cash crunch, Comptroller Tom DiNapoli on Tuesday said.

The cap limits property tax levy increases to 2 percent or the rate of inflation, whichever is lower. There are narrow exemptions for some growth and local governments can override it.

Local governments are facing limited revenue options amid a pandemic that has ground the economy to a virtual halt for much of the year so far, freezing sales tax revenue and potentially slashing state aid by up to 20 percent.

“The pandemic and the fiscal uncertainties municipalities are facing add to the challenge of adhering to the tax cap,” DiNapoli said. “At the same time the levy growth rate is dropping, both revenues and spending could deviate significantly from what was planned. Local governments must closely monitor their budgets to ensure they are balanced and that they have cash on hand.”

Some county governments receive most of their annual budget revenue from sales taxes, keeping pressure off property owners. That may not be the case this year as that money has largely evaporated.

The lack of revenue could lead to service cuts, reductions in overall spending or tax hikes in order to make ends meet.

Another Coronavirus Casualty: NYC Property Tax Reform

Momentum to Overhaul 'Confusing & Unfair' Tax System Stalls

The dwindling momentum for NYC property tax reform is being exacerbated by the coronavirus crisis and adjacent economic disaster, according to a recent report in the Gotham Gazette. An advisory commission convened by the Mayor and the City Council to assess and reevaluate the city’s “confusing and unfair” property tax system released its long-awaited recommendations back in January, but the growing pandemic stalled the intended community conversations and legislative proposals to follow.

Initially formed as a next-ditch effort to address what many see as an antiquated, opaque, and inequitable jumble of assessments and levies that overburden lower-income communities and communities of color, the Advisory Commission on Tax Reform is now in a holding pattern while city and state officials grapple with issues of logistics, prioritization, and a virus-fueled financial crunch.

However, as the Gazette indicates, the communities hit hardest financially and health-wise by COVID-19 are also disproportionately taxed in the current system. According to the report, “Homeowners in some of the city’s most booming neighborhoods have among the lowest effective property tax rates, as do some of the most expensive co-ops and condos, while homeowners in places like the Bronx and Staten Island, which have not seen rapid gentrification, pay a much higher percent of their property’s value in real estate taxes. Tenants often serve as a release valve for the high taxes on large rental buildings.”

The January recommendations focused on inequities in the assessment of one- to three-family homes, small rental buildings, and cooperatives and condominiums, sparking a range of reactions around the real estate industry. The first of a series of public hearings was set to take place in Staten Island on March 12, but with the pandemic taking hold in New York and surrounding areas at that time, the session was cancelled.

And now, with the city's budget filed on July 1 and a $9 billion budget deficit looming, expedient reforms to the system that garners such a large percentage of city revenue—35% for the current fiscal year, according to recent estimates—are not likely. New York City “relies on property taxes to fund the essential city services like hospitals and our first responders,” says Laura Feyer, a spokesperson for Mayor de Blasio, pointing to the conundrum in addressing a burdensome property tax system during a pandemic.

The Mayor himself echoed that proposition on May 10 to reporters who asked about property tax relief for struggling homeowners and landlords: “Especially since we don’t know what’s going to happen in Washington,” said de Blasio, “we right now are absolutely dependent on whatever resources we can get, and property tax is a part of it for sure.”

On the other hand, New York City fiscal watchdogs and reform groups say that the pandemic has made addressing inequities in the property tax system is more important than ever, and a growing chorus of landlords, tenants, and business owners are calling for property tax relief as the economic fallout knocks on their doors. “The time should not be wasted,” wrote Andrew Rein, executive director of Citizens Budget Commission, a nonprofit watchdog, in an email to Gotham Gazette. “The Commission’s report was a solid start to comprehensive reform.”

Similarly, Martha Stark, former finance commissioner under Mayor Michael Bloomberg who now serves as policy director of the advocacy group Tax Equity Now, said in an interview, “Given that the city’s only mechanism for raising revenue is going to be through the property tax, I don’t know how much more urgent it could be to ensure the taxes are done in a way that is fair and that is really reflective of people’s values.” (Tax Equity Now has sought to reform the tax system through the courts; it filed a lawsuit against the city and state that was a catalyst for the formation of the advisory commission in the first place. That lawsuit was dismissed in the appellate division earlier this year, according to the Gazette, but the group is filing an appeal in the state’s highest court.)

However, changing New York City’s property tax scheme requires action at both the city and state levels. Over the past 40 years, the Gazette notes, conflicting interests in those arenas have put a wrench into any meaningful reform. Now, while the city strains to shore up its budget, the state has put property tax reform on the back burner. “Property tax reform is not the issue we are dealing with this year,” said State Senator Brian Benjamin, a Manhattan Democrat and chair of the Committee on Revenue and Budget, on a recent podcast. “At this point we are really dealing with the COVID crisis.”

De Blasio to sign Airbnb, property tax legislation

Bills set late-payment interest rates for rental apartments and some condos

Mayor Bill de Blasio will sign three bills today on reporting of short-term rental data and interest rates for overdue property taxes.

The first bill will define which short-term rental transactions have to be reported to the Office of Special Enforcement. It is the latest development in a dispute between New York City and Airbnb that began in 2018, when the platform sued the city for asking it to fork over data on rentals.

That disagreement came to an end last month when Airbnb agreed to provide listing information to the city — although it managed to secure some exemptions. Hosts who rent rooms for no more than two guests or spaces that are infrequently rented are spared from the reporting requirement. Hotels and bed-and-breakfasts can apply for an exemption.

Airbnb and the city both touted the agreement, which Airbnb hoped would strengthen its case for a state bill it can live with, sponsored by state Sen. James Skoufis, which would regulate and tax short-term rentals.

The other bills de Blasio is set to sign lay the ground rules for interest payments on unpaid property taxes this year.

One bill would allow some condominium owners who use their property as a primary residence to pay zero interest on late payments. To qualify, owners must prove a Covid-related financial hardship and have either already deferred their property taxes, or have a property assessed for less than $250,000 and an income of less than $150,000.

Rental property owners whose buildings are assessed at $250,000 or more were upset with the final bill on property taxes, which the City Council approved June 25, leaving some rates at 18 percent. Calls from some City Council members for more meaningful cuts to late-interest fees went ignored, and the body approved a temporary 7.5 percent interest rate for property taxes on certain multifamily apartment buildings.

Property owners who experienced financial hardship as a result of Covid-19 are eligible if their property is assessed between $250,000 and $750,000. If the property is assessed at more than $250,000, property owners are eligible only if at least half of the units are residential rentals, of which at least half must be rent-regulated, and the total number of apartments can’t exceed 30.

Sen. Gounardes Announces Truth in Budgeting Act to Provide Property Tax Transparency

Senator Gounardes unveiled a new bill, S8644, mandating that any property tax increase of more than two percent in real terms be reported to the public and the City Council, and that public hearings must be conducted before the adoption of such a budget. As a result, taxpayers will be more aware of any increases in property taxes resulting from rising market values.

Due to the booming housing market, New York City’s property tax levy has dramatically increased despite tax rates remaining mostly constant. This bill’s Truth in Budgeting Act, mirroring laws in Maryland, Tennessee, Texas, Utah, and Virginia, will help ensure that the public is aware of these increasing taxes and where the money is going in the budget.

“Property taxes have skyrocketed over the last six years. The burden of a rapidly-growing city budget is disproportionately felt by homeowners in non-gentrified outerborough neighborhoods across the city, yet the City keeps saying that they are not raising property taxes, which flies in the face of the lived experiences of homeowners who see their property tax bills grow significantly year after year after year. The Truth in Budgeting

Act will shine some much needed light to make our convoluted property tax system more open, honest, and transparent to everyone. This is just the first step towards long-term property tax reform that will ensure that the wealthiest homeowners in New York City – and not everyday New Yorkers – pay their fair share to support vital city services," said State Senator Andrew Gounardes.

Will COVID-19 Cause A Decline In Property Taxes?

The COVID-19 pandemic is driving a sharp decline in state and local income and sales tax revenues. But history suggests that one key local government revenue source—property taxes—may be relatively immune from this public health crisis.

Pandemics can drive down housing prices. University of Amsterdam professor Marc Francke and Maastricht University professor Matthijs Korevaar examined ten outbreaks of bubonic plague that ravaged Amsterdam in the 16th and 17th century and two episodes of cholera in Paris in the 19th century. They found that these pandemics lowered home prices by an average of between 5 percent and 6 percent during the outbreaks and another 4 percent in the following year.

In Amsterdam, average prices fell by 13 percent within six months of a plague outbreak. And in Paris, home prices fell more in areas heavily affected by cholera. Yet, these price effects were short-lived: The "shocks were only transitory, and both cities quickly reverted to their initial price paths."

Even if property values fall, the COVID-19 pandemic probably will have little immediate effect on local government revenues. And even over the longer run, revenues will probably not be severely affected.

The reasons can be found in two papers analyzing state and local government revenue after the real estate bubble burst during the Great Recession. Indiana University professor John L. Mikesell and KDI School of Public Policy and Management professor Cheol Liu state in a recent article that in many areas of the country after the Great Recession, assessments for property tax purposes were much lower than market prices. In part, this occurs because some areas cap allowable annual increases in assessment values. They point out that if the growth rate in property values exceeds the caps for a long time, even substantial declines in the market values of properties can lead to little or no change in assessed values.

This phenomenon mitigated the effect of housing price declines during the Great Recession. The result? Even as home prices fell by "25% in many cities in California, Arizona, Nevada and Florida and by 10% or more in most other cities" in 2007 through 2009, assessments increased by more than 9 percent in 2007, more than 8 percent in 2008, and by 2 percent in 2009.

Research by Federal Reserve Board economists Byron Lutz and Raven Malloy, and former Fed economist Hui Shan shows that there are often significant lags between changes in property values and assessments, delaying the effect of the decline in values. They also find that local governments can partially compensate for falling declining assessments by raising tax rates. As a consequence "property tax receipts continued to grow at a robust pace through the end of 2009, even though house values had plunged in the previous three years." Reflecting the timing lag, growth rates for property tax receipts eventually went negative in 2011 and 2012, before rebounding in 2013.

No one knows for certain what comes next for property values. In particular, uncertainty surrounds commercial properties as the pandemic has led to shutdowns of office buildings and retail outlets. But if history is a good indicator, and so far it seems to be, property taxes may hold up better in the COVID-19 economy than sales and income taxes, which is a small piece of goods news in an otherwise dismal outlook for state and local governments.

Property tax relief a band-aid solution to bigger problem, says industry

New York landlords have welcomed the city's first attempt at property tax relief as a step in the right direction.

But they have said the City Council needs to do more to protect property owners whose rent revenue has been decimated during the COVID-19 pandemic.

"The City Council's first attempt at property tax relief is notable, but we must do much more to provide relief to property owners facing staggering increases in expenses and loss of income like so many others during the pandemic," said REBNY in a statement.

"Next steps should include reducing property tax interest penalties further and implementing payment plans for those experiencing financial hardships. It is important to note that last week a majority of City Council members spoke in support of the need for long overdue real property tax reform."

Two bills – Intro 1974 sponsored by Public Advocate Jumaane Williams, and Intro 1964-A from Council Member Margaret Chin – are aimed at helping mom-and-pop legacy property owners in particular.

Intro 1964 would require the Department of Finance to offer July 1, 2020, real property tax deferments in two scenarios. First, to property owners whose property was occupied by an active business or trade on March 7, 2020 and was subject to Governor Cuomo's executive order limiting seating, occupancy or on-premises service limitations. Second, if the property owner experienced an unexpected decline in income from March 1, 2020 through June 30, 2020. In both scenarios, the assessed property value must exceed $250,000.

The deferral agreement will require the taxpayer the pay 25 percent of the deferred taxes by October 1, 2020 and the remainder by May 1, 2021. The agreement would also require the property owner to provide their tenant, whether commercial, residential or institutional, an option for a forbearance on rent, and shall not charge the tenant an interest rate on late rent payments greater than 25 percent of the property owner's own unpaid deferred taxes.

Intro 1974 provides property tax deferments, without interest or penalty, to property owners who have experienced hardship, have a combined annual income of $250,000, and whose assessed property value is $250,000 or less. The property must also be the taxpayer's primary residence. The bill will defer the taxes due on July 1, 2020 until October 1, 2020.

The bill also increases the income threshold of the Department of Finance's Extenuating Circumstances Income-Based installment agreement, from nearly $60,000 to $200,000.

While welcome, Frank Ricci, director of government relations of the Rent Stabilization Association, said the bills don't go far enough.

"Just as the eviction moratorium buys more time for tenants struggling to pay their rent, the City Council's interest rate debate should have been coupled with extending to September 30 the impending July 1 property tax payment. This would take some pressure off the largest providers of affordable housing," said Ricci, whose organization represents 25,000 owners of the nearly one million rent-stabilized apartments in the five boroughs.

"Building owners want to meet their obligation of paying property taxes, but they just need more time. They know the importance of their tax revenue, which funds municipal services – things like education, sanitation and healthcare."

New York has some of the highest property taxes in the nation, disproportionately hitting small properties in gentrifying neighborhoods.

Mom-and-pop legacy property owners have been calling for City intervention well in advance of the July 1 property tax deadline. Despite experiencing dramatic income loss, some property owners have proactively offered relief and flexibility, without any City incentive, to help their commercial tenants continue operations.

In a statement, Chin said, “These small property owners operate centuries-old tenement buildings that house longtime low-income residents who pay rent as low as $50. Yet they continue to suffer the consequences of a broken property tax assessment system.

“Now with commercial tenants having to close their doors practically overnight, we can’t allow the City to continue to ignore the needs of these property owners any longer or — worse — profit off of their vulnerability. This bill is a first step to pushing the City to being a stronger partner to this neglected constituency and get them on the road to recovery.”

While the City began to lift some restrictions on June 8, 2020, as part of the Governor’s Phase 1 reopening plan, many will be unable to make up loss incomes and revenues after rent collections tumbled.

During a public hearing on the tax relief, Jeffrey Shear, the Department of Finance’s Deputy Commissioner for Treasury and Payment Services, testified that property taxes are the City’s biggest revenue. Without that revenue, the City would have trouble paying many of its employees and vendors and providing many vital services.

Shear stated the Department and Banking Commission supported the Public Advocate’s bill, but expressed that the program should not be over-expanded.

The Department’s main qualms related to the bill offering deferrals to properties valued over $250,000, who experienced a decline in income during the COVID-19 months. Shear stated, “the properties in this category account for 70 percent of the $30 billion in property tax revenue,” pointing out that the vast majority of New York City businesses would qualify regardless of the size of the property and the amount of taxes due.

Shear said, “Even if a fraction of eligible businesses opted into this program, the City’s cash position would likely be severely affected.”

OAKLAHOMA

Supreme Court Ruling on Oklahoma Tribal Land Raises Questions for Oil Industry

A U.S. Supreme Court decision recognizing about half of Oklahoma as Native American reservation land has implications for oil and gas development in the state, raising complex regulatory and tax questions that could take years to settle, according to Oklahoma attorneys.

The court on Thursday overturned an Oklahoma tribe member’s rape conviction because the location where the crime was committed should have been considered reservation land and therefore outside the reach of state criminal law.

The decision does not affect property ownership, but attorneys said it has regulatory and tax implications within reservation lands of the state's "Five Tribes" - Cherokee, Chickasaw, Choctaw, Creek and Seminole. Oklahoma was the fourth-largest U.S. crude oil producer last year, accounting for about 5% of production, according to government data.

"You'll see the Five Tribes make arguments perhaps that they have taxation authority," said Taiawagi Helton, who teaches environmental, property and Indian law at the University of Oklahoma. "It's possible you could see some slight increases in taxation," with companies paying production taxes to both the state and tribes.

"For pipeline approvals, tribes will expect to have a broader consultative role," Helton said.

Tribes may not want to immediately act, but this case suggests they would have regulatory authority over oil and gas, said Oklahoma energy attorney A.J. Ferate.

"Do I suspect anybody is going to get their existing production taken away? I think that would be a very extreme issue," Ferate said.

"We're talking about decades of litigation and questions. We're in a whole new world here in Oklahoma as to how do all of these pieces fit together and how do we move forward," he said.

Mike McBride III, chair of Indian law at Tulsa law firm Crowe and Dunlevy, said there may be implications for wind energy and electric transmission as well as sales of water.

Industry group the Petroleum Alliance of Oklahoma said it hoped there would be no change from current regulation.

"It is critical for continued investment in Oklahoma that the state maintain primacy with regard to the regulation of oil and gas operations, and that issues of title with regard to real property remain unaffected," it said in a statement.

The Petroleum Alliance and other business groups had opposed the recognition of reservation status in a brief to the Supreme Court arguing that it would "recast the business and legal environment" across lands of all Five Tribes.

The Five Tribes and the state issued a joint statement on Thursday that they were working together on a framework of shared jurisdiction to "support public safety, our economy and private property rights."

UTAH

Sorry, you won't be getting a pandemic property tax break

Regardless of whether your business or home has been financially leveled by the pandemic, your property tax won't see a drop in 2020. That's not to say the pandemic hasn't made some Utahans' properties worth less (or in some cases more). It's just that the taxes were computed January 1st, 3 months before the virus hit. Meaning your bill won't reflect the impact.

Joshua Nielsen, Assistant Director for Property Taxes with the Utah State Tax Commission, says most people will be getting their property tax bills on July 22. "And [people] they are gonna see that [valuation], and not understand that that was the value as of January 1st and think it's the value as of [right now]… that could be quite a shock to some people."

The tax commission is worried that those who feel their property is overvalued, although mistakenly, will fight it. And that this will strain the UTC, already struggling with depleted resources due to COVID 19. "There is a growing concern among elected officials in the counties, that the number of appeals will go up this year and that it will put a huge burden on the counties and their processes. Which is understandable."

In a media release from the Tax Commission, they say “if you choose to appeal the value of your property in 2020, the local board of equalization should consider and weigh all evidence that may be presented. This evidence should reflect what was known or knowable as of the lien date January 1, 2020. ” So… what about next year?

Nielsen says there is no guarantee that if your property value is undercut NOW, that you’ll see that in NEXT year’s tax bill. Because that will be tabulated… January 1st, again. “Will the economy recover? What will the market look like? We have assumptions and opinions, but until that happens we don’t know.”

He adds that for those that are having real financial hardship paying their taxes, there are programs that you can apply through your county for Tax Relief, Abatement, and Referral.

WASHINGTON

Let’s talk D.C. property taxes

In my article last month, I referenced taxes in D.C. and promised you more information at another time. Well, this is the time.

Now, I’m not talking about income taxes (which, incidentally, are due next week) but about property taxes.

In D.C., the new tax year begins on Oct. 1 and we pay property taxes every six months, in March and September. Our taxes are paid in arrears, meaning that those coming due on Sept. 15, 2020 cover the six-month period beginning on June 1, 2020.

The method of assessing tax value of homes in D.C. has always been a mystery to me. In many states, reassessments are conducted annually or when the property changes hands. You hear horror stories about taxes in Chicago, New York, or even Florida that vastly exceed the current maximum deductible amount.

Even though I have owned four houses and two condominiums in D.C., only twice have I been asked to complete a tax assessment questionnaire. And when I asked around, nobody else knew what I was talking about.

The D.C. Office of Tax and Revenue (OTR) has four different classifications and there are so many permutations within them that it can leave your head spinning.

Class 1 is defined as “Residential real property, including multifamily.” This applies to your detached home, rowhouse, condominium, or cooperative. The base tax rate for a Class 1 property is currently 85 cents per $100 of the property’s assessed value, but that may not be what you pay at all.

For example, if you occupy the property as your principal residence, then you are entitled to a Homestead Exemption, which allows you to exclude $75,700 of the assessed value of your home for an annual property tax savings of $643.45.

In addition to the Homestead Exemption, if you are 65 or older (or disabled), own 50% or more of your property and have a household adjusted gross income less than $134,550, you can apply to have the OTR reduce your property tax by 50%. Sound confusing? Here’s an example.

An assessment of $500,000 would yield an annual property tax of $4250. A Homestead Exemption would reduce that to $3606. Applying the Senior Citizen or Disabled rate would further reduce your tax to $1803 annually.

And then there's the cap – the saving grace of D.C.'s property tax system. Once you own your home, your assessment cannot go up more than 10% per year (or 5% per year if you're paying the Senior Citizen or Disabled rate).

Some people can apply for a tax abatement and not pay any property tax at all for up to five years. The Tax Abatement program has income limits based on the size of your household (currently $74,520 for a party of two) as well as a purchase price limit of $479,066.

If you own commercial property, you will be taxed under Class 2, with three different rates depending on the assessed value of the building.

Class 3 covers vacant properties and the charge is $5.00 per $100 of assessed value, so using the example of our $500,000 assessment, you would pay $25,000 per year in property tax. Luckily, there is an application for an exemption for up to 18 months if you are selling your house (and if it takes me 18 months to sell your house in this market, just shoot me now).

Class 4 gives me nosebleeds. This is the blighted property class, for homes that are not only vacant but also uncared for, abandoned, boarded up, falling down, fire damaged and/or a draw for unwanted critters or vagrants. A whopping $10.00 per $100 in our example will cost $50,000 per year. What an incentive to clean up your property!

There can be other consequences as well. Late payment of property taxes, for example, can result in a charge of 10% of the tax and interest at the rate of 1.5% per month. The District might also place a lien on your home and require you to pay the balance owed when you sell it, eating into your equity or profit. Worse yet, your property could be put up for tax sale.

Seattle's new payroll tax is bad policy

The Seattle City Council passed its latest iteration of a payroll tax Monday, a brazen move out of touch with the economic crisis facing the city.

Under the political cover of the COVID-19 emergency, the council voted 7-2 to push through a long-term tax on the city's richest employers for paying high-income jobs. The council has long shown a willingness to stretch to invent a rationale for an "Amazon tax," having previously discussed it as a necessity for addressing homelessness and other inequities.

Once again, the council machinated toward a tax while still brainstorming its goal along the way. But setting bad governance aside, taxing employers for providing high-income jobs within city limits could be ruinous for the city's, and region's, struggling economy.

The 800 or so businesses subject to the payroll tax — Amazon preeminent among them — now have incentive to take their highest-paying jobs across Lake Washington, or further. While other cities welcome well-paying jobs and court more of them, Seattle is punitive instead. This is the posture the council has pushed the city into, by a veto-proof majority. Mayor Jenny Durkan should veto it anyway and risk an override vote.

Even if the still-murky plans for spending the projected $200 million in annual revenue are filled in with thoughtful precision, that money comes at a hard cost. That revenue is siphoned from businesses, which will manage their balance sheet losses in ways that could hurt Seattle.

One way is moving jobs out of town. The pandemic has shown Amazon and other companies that many office workers can be productive from home long-term. The payroll tax could be an incentive to base those jobs in smaller suburban offices, or out of state, and let workers avoid the city. Such a shift cuts into the customer base that downtown retail and restaurants rely on. Restaurateur Tom Douglas permanently shuttered two once-bustling South Lake Union restaurants the same day the tax was announced. More closures will surely follow. This is how a city loses vibrancy, not to mention small businesses, working-class jobs and sales-tax receipts.

What's bad for Seattle will radiate regionally if an inability to attract and retain top employers diminishes one of the world's great cities. The council should now make a sober assessment of what the city might look like without its largest corporate citizen.

The tax must be readdressed. The repercussions will become Seattle's problems, not Amazon's. At the least, a veto would give the council opportunity to strengthen the flimsy clause that only suggests the tax might be reconsidered if similar regional or statewide taxes are created.

Councilmember Alex Pedersen, who along with Debora Juarez voted against the tax, rightly characterized the rush job as "taxing first, asking questions later." Disappointingly, the other council members showed they were willing to overlook thoughtful governance to strike an activist pose. They should reconsider the consequences for the city's residents and workers.

It's time to stop letting Amazon hold Seattle hostage

In the wake of Seattle City Council passing a long sought-after big business tax, many have begun to ring the alarm, warning that it may lead to companies like Amazon picking up stakes and leaving town.

Seattle council passes landmark big business tax proposal

The Downtown Seattle Association labeled the measure "ill-advised." The Seattle Times Editorial Board called it "bad policy."

"This is how a city loses vibrancy," it claimed.

The argument against the tax boils down to a pair of arguments: That it's too onerous for companies, and that we shouldn't let it drive businesses out of the city. Neither assumption is accurate.

First: The measure passed by city council was a reasonable compromise amounting to a relatively modest tax (and less than half of what Councilmembers Kshama Sawant and Tammy Morales were pushing for early in 2020).

The tax itself applies to any company with over $7 million in payroll expenses, levying 1.4% on each employee earning between $150,000 and $399,999, and 2.4% for anyone earning $400,000 or more. The basic math works out to a company shelling out just $9,600 for each Seattle-based employee who earns $400,000. For employees earning $150,000, that number plummets to $2,100 per person. The money will also have to be paid by the company, and can't be taken from workers themselves.

For a company that pulled in over $120 billion in gross profit between March 2019 and March 2020, this is a rounding error. And if we're trying to figure out who really needs this money right now — a city staring down the barrel of a pandemic, a massive budget shortfall, and a homeless crisis, or a company run by the richest man in the world — it's not exactly a tough question.

That aside, odds are it would cost the company more to abandon the South Lake Union office spaces it spent hundreds of millions of dollars building than it would to stay and just pay the council's tax.

Second: In 2018, Amazon warned the city that if it went through with its controversial head tax, it would be forced to leave town, even going so far as to halt construction on a downtown Seattle tower. City council quickly retracted the tax, and Amazon began moving jobs out of Seattle anyway. We saw that firsthand as thousands of employees were moved to Bellevue, in the midst of a massive campaign for a second headquarters in Virginia.

That saw Amazon making plans in 2019 to build the largest office tower Bellevue's ever seen. It also has roughly seven spaces in the city it either plans to move into or is already occupying. That includes roughly 2,000 employees in Expedia's former Bellevue corporate headquarters, with plans to move another 4,500 workers into that building by the end of 2020.

Employees from Amazon's worldwide operations team also began moving to Bellevue last April, with the company planning to eventually have the several thousand employees on that team entirely operating from the Eastside. That team is responsible for ensuring the delivery of packages to customers, and oversees 250,000 employees worldwide across 173 fulfillment centers. It manages the company's delivery trucks, as well its fleet of 40 airplanes.

The larger point is that Amazon is going to make decisions that help its own interests, not Seattle's. And if it does truly, sincerely care about the city it occupies, then we should be asking ourselves why it would leave town over even the most minuscule of tax burdens.

That's all without even mentioning the fact that Amazon spent $1.4 million during 2019's election cycle in a failed bid to flip Seattle City Council. This is as good a time as any to remember that large corporations should exist to enhance cities, rather than aspire to run them.

That being so, no company should be able to hold an entire city hostage over reasonable proposals asking that they pay their fair share. If that's really all it takes to make Amazon leave, then it sends a clear message that multi-billion dollar companies don't put down roots in cities because they care about their residents — they're here to make the most money they possibly can, and it would serve us well to treat them accordingly.

Seattle passes payroll tax targeting Amazon and other big businesses

KEY POINTS

- The Seattle City Council passed the JumpStart Tax, a payroll tax on the city's biggest businesses and highest earners, including Amazon.
- The legislation uses a tiered system of taxation, with the highest level designated for companies with annual payroll expenses of more than $1 billion.
- It represents a major blow to Amazon, which fought the passage of a so-called head tax in 2018.

Seattle's City Council has approved a new tax for the city's biggest businesses and their highest earners, such as Amazon.

Called the "JumpStart Seattle" tax, the bill passed late Monday on a 7-2 vote and is expected to go into effect in 2021. Money from the tax will initially be used to fund coronavirus relief but will eventually go toward addressing housing and homelessness in Seattle.

Under the measure, businesses with at least $7 million in annual payroll expenses will be taxed 0.7% to 2.4% on the amount they pay Seattle-based employees, with tiers based on individual salary amounts above $150,000. The highest bracket targets companies like Amazon with annual payroll expenses above $1 billion. Those companies will be taxed 2.4% for employees making more than $400,000.

The decision is a blow to Amazon, which fought the passage of a so-called head tax in 2018 via a well-financed referendum campaign alongside other Seattle businesses. After the head tax was repealed, councilmember Kshama Sawant pushed to revive discussions around a big business tax with her “Tax Amazon” campaign. The JumpStart tax is more aggressive than the “Tax Amazon” legislation, which sought to apply a flat 0.7% payroll tax on big businesses.

Amazon declined to comment on the JumpStart legislation.

Councilmember Teresa Mosqueda, who introduced the JumpStart legislation, said the tax’s approval is a “big step towards creating a progressive tax system that works for all.” The tax didn’t garner support from Seattle’s business community, however, with the Greater Seattle Chamber of Commerce saying the tax “pins Seattle’s economic future on local businesses remaining strong, at a time when the depth and breadth of the crisis is still unfolding.”

The passage of the JumpStart tax could further accelerate Amazon’s move to secure office space outside of Seattle.

Amazon maintains an expansive Seattle footprint, but in recent years, it has moved to establish a presence in areas outside of the city. Amazon said last month it would lease 111,000 square feet of office space in Redmond for 600-plus employees. The company also has an office in suburban Bellevue, where it is building a 43-story tower, its largest yet.