IPTI Xtracts

Property Tax and Assessment News from Around the World

UNITED STATES– December 2020

CONTENTS

Ranking Property Taxes on the 2021 State Business Tax Climate Index

Today's map shows states' rankings on the property tax component of our *2021 State Business Tax Climate Index*. The *Index*'s property tax component evaluates state and local taxes on real and personal property, net worth, and asset transfers. The property tax component accounts for 14.8 percent of each state's overall *Index* score.

Property taxes matter to businesses for several reasons. First, businesses own a significant amount of real property, and tax rates on commercial property are often higher than the rates on comparable residential property. Many states and localities also levy taxes not only on the land and buildings a business owns but also on tangible property, such as machinery, equipment, and office furniture, as well as intangible property like patents and trademarks. Across the nation, property taxes impose one of the most substantial state and local tax burdens most businesses face. In fiscal year 2018, taxes on real, personal, and utility property accounted for 38 percent of all taxes paid by businesses to state and local governments, according to the Council on State Taxation.

Although taxes on real property tend to be unpopular with the public, a well-structured real property tax generally conforms to the benefit principle (the idea in public finance that taxes paid should relate to benefits received) and is more transparent than most other taxes.

Taxes on intangible property, wealth, and asset transfers, on the other hand, are harmful and distortive. States that levy such taxes—including capital stock taxes, inventory and intangible property taxes, and estate, inheritance, gift, and real estate transfer taxes—are less economically attractive, as they create disincentives for investment and encourage businesses to make choices based on the tax code that they would not make otherwise. Businesses with valuable trademarks may seek to avoid headquartering in states with intangible property taxes, and shipping and distribution networks might be shaped by the presence or absence of inventory taxes.

This year, the *Index*'s methodology was updated to also take into account split roll property taxation and property tax limitations. A state that treats different classes of property significantly differently will score lower on that variable than one that does not do so. Nearly all states impose some sort of restriction on local governments' ability to raise property taxes, but these limitation methods vary dramatically. Assessment limits, which restrict the rate at which a property's assessed value can increase each year, distort property taxation, causing similar properties to face disparate effective tax rates. Rate and levy limits, on the other hand, restrict the growth of rates or total collections, which maintain tax neutrality while still restricting the growth of property tax burdens.

States are in a better position to attract business investment when they maintain competitive real property tax rates and avoid harmful taxes on tangible personal property, intangible property, wealth, and asset transfers.

This year, the states with the best scores on the property tax component are New Mexico, Indiana, Idaho, Delaware, Nevada, and Ohio. States with the worst scores on this component are Connecticut, Vermont, Illinois, New Hampshire, New Jersey, and New York, plus the District of Columbia.
To gauge whether your state's property tax structure has become more or less competitive in recent years, see the following table. (Methodological changes are backcast to prior years to facilitate comparability.)

State	2021 Rank	Change from 2020 to 2021	2020 Rank	2019 Rank	2018 Rank
Alabama	19	-1	18	19	17
Alaska	22	1	23	21	40
Arizona	11	1	12	12	12
Arkansas	25	-1	24	24	24
California	14	1	15	14	15
Colorado	32	-1	31	31	31
Connecticut	50	0	50	50	50
Delaware	4	0	4	4	8
Florida	13	0	13	13	13
Georgia	24	5	29	27	26
Hawaii	9	1	10	9	7
Idaho	3	0	3	3	2
Illinois	48	0	48	48	47
Indiana	2	0	2	2	3
Iowa	38	0	38	38	37
Kansas	30	0	30	30	29
Kentucky	21	0	21	22	20
Louisiana	23	2	25	25	22
Maine	40	0	40	40	39
Maryland	43	-2	41	41	42
Massachusetts	44	0	44	44	45
Michigan	35	1	36	36	36
Minnesota	31	1	32	32	30
Mississippi	37	0	37	37	35
Missouri	8	1	9	10	10
Montana	28	-2	26	29	27
Nebraska	41	-2	39	39	38
Nevada	5	1	6	5	6
New Hampshire	47	-2	45	45	44
New Jersey	46	0	46	46	49
New Mexico	1	0	1	1	1
New York	45	2	47	47	46
North Carolina	26	2	28	28	28
North Dakota	12	-5	7	6	4
Ohio	6	-1	5	7	5
Oklahoma	29	-2	27	26	21
Oregon	16	3	19	16	18
Pennsylvania	15	1	16	17	16
Rhode Island	42	0	42	42	43
South Carolina	34	0	34	35	34
South Dakota	20	-6	14	15	14
Tennessee	33	0	33	33	33

State	2021 Rank	Change from 2020 to 2021	2020 Rank	2019 Rank	2018 Rank
Texas	36	-1	35	34	32
Utah	7	1	8	8	9
Vermont	49	0	49	49	48
Virginia	27	-5	22	23	23
Washington	18	-1	17	18	19
West Virginia	10	1	11	11	11
Wisconsin	17	3	20	20	25
Wyoming	39	4	43	43	41
District of Columbia	49	0	49	49	47
Note: A rank of 1 is best, 50 is worst. All scores are for fiscal years. DC's score and rank do not affect other states. Source: Tax Foundation.					

Property Tax Component of the *State Business Tax Climate Index* (2018–2021)

Distress looms over U.S. commercial real estate in 2021

The world may remember 2020 as the year "normal life" was torn up by the coronavirus pandemic.
But for many U.S. commercial real estate owners the big trouble hasn't even started yet.
"I think it's going to be a two-headed monster," said Pat Jackson, chief executive officer and founder of Sabal Capital Partners in Irvine, Calif., of the outlook for struggling commercial buildings.
"Some assets are going to recover and do well. Obviously, we're very bullish on multifamily over the long-term," said Jackson, a lender and investor in billions worth of battered assets in the last recession. "On the flip side, there's a lot of distress and it's coming."
Jackson sees properties that have run "out of runway," after almost a year of business disruptions. And while the government races to distribute vaccines, lockdowns in the U.S. have ramped back up in the colder months as COVID-19 cases, hospitalizations and deaths soared.

The resurgence of the coronavirus has stoked fears that a V-shaped economic recovery could be out of reach, while also spurring concern that banking regulators, worried about potentially spiraling risks to the financial system, might crack down on banks and others exposed to souring real estate.

"The second surge of COVID hasn't helped anyone," said Lisa Pendergast, executive director at the CRE Finance Council, a commercial real estate finance trade group.
Pendergast pointed to the 10.2% of loans out of the near $600 billion commercial mortgage-backed securities (CMBS) market that in November were in "special servicing," a category that is often the first stop for borrowers looking for temporary or permanent debt relief.

That's below the 12.6% peak in the wake of the 2008 global financial crisis, which took about two years to reach. But the volume of problem loans easily could grow as the pandemic wears on and more borrowers come to grips with its fallout, including how the use of commercial buildings ends up changing.
In a sign of the times, New York City's reeling commercial real-estate industry recently put forth a proposal to turn some 1 million square feet of Manhattan office space into housing, the New York Times reported, an effort to avert a potential collapse in property prices.

Big property owners also have become a key focal point, because unlike real-estate loans held by banks and insurance companies, the CMBS market makes it fairly easy for borrowers on Wall Street to walk away from properties when trouble hits.
"You can just hand back the keys," Pendergast said of most CMBS financing.

A road map for distress
For decades, the CMBS market has been a key corner of finance where loans on hotels, offices, industrial centers and other commercial properties are packaged into bond deals and sold to investors, including pension and bond funds.
While it isn't the largest source of commercial real estate finance, CMBS appeals to borrowers looking for debt on a non-recourse basis, meaning if a property fails or ends up underwater, a lender can't go after the operator's other assets to recoup losses.

"Keep in mind," Pendergast said, "A lot of borrowers, if they secured an asset five, six or seven years ago, they probably made a good return on their equity and made a profit." Some will say, "Take my asset."
Rarely has that been the case this year. Distressed sales accounted for only about 1% of all commercial property sales in the past two quarters, according to Real Capital Analytics, even though more likely will come.

Analysts led by John Sim at J.P. Morgan put together this potential timeline for CMBS loans and distress, including key dates when relief programs expire, after a deluge of property owners fell behind in March when a national emergency was declared.

LIQUIDATIONS PEGGED TO START LATER IN THE YEAR

Properties to watch
While it may be easier for CMBS borrowers to walk away from their debts, high profile problems don't often go away quietly.
That's because bondholders receive monthly property-level performance reports that make it possible to track specific struggling malls, iconic hotels and even the decline of a historic Times Square building financed by President Trump's son-in-law in the months before he took office.

Jared Kushner cosigned loans to financed 229 West 43rd Street, an 18-property that once houseD the New York Times, in October 2016, before he became a White House adviser to his father-in-law.

It's among about $1.1 billion worth of property loans now considered distressed in Times Square, according to real-estate data tracking platform CREDiQ. And its latest property appraisal slashed its value by 80% to about $92.5 million.
"That was kind of an eye-opener to see how much the value had dropped," said CREDiQ co-founder Bill Petersen. But he also thinks the property's woes may not necessarily end up reflecting the value of other Times Square buildings, given that it lost major tenants even before the pandemic hit.

Kushner Properties did not respond to a request for comment.

Record CRE debt
Ryan Severino, chief economist at commercial real-estate firm JLL **JLL, -2.88%**, remains optimistic that parts of the market will snap back over roughly the next 18 months if a successful COVID-19 vaccine can soon start being widely distributed.
But Severino also sees an uphill battle for properties that struggled before COVID-19 hit, or in his words, buildings that "after 10-plus years of economic expansion" failed to find a footing, including lower-quality malls and office buildings in less desirable areas, which have languished since the last recession.

The overall stakes have never been higher. Federal Reserve data shows U.S. commercial property debt climbed to an all-time high of $3.06 trillion in the third quarter, from a 10-year low of $2.2 trillion in 2012.

CRE debt hits record
ST. LOUIS FED DATA
Some property debt will be repaid without a hitch. Other owners will find debt or equity to ride out the storm. But the pandemic still likely means some properties will fetch fire sale prices. At least, that's the hope among bargain hunters.
"It's really good when everyone is looking for opportunities," said Gayle Klein, a principal at law firm McKool Smith, who represents hedge funds, private equity and others in commercial and securities litigation. "Because my clients do have money to spend."

Home Values Drop 21% From Last Year in Northern California Town Devastated By 2018 Wildfires

Even as most of the U.S. housing market is hot, home values are down from last year in parts of Queens and Brooklyn, San Francisco and Portland, Oregon, among other places that have been hit hard by the pandemic and the shift to remote work

Home values dropped 20.5% in October from a year before to $136,000 in the 95969 zip code in Paradise, California—an area that was devastated by record-breaking wildfires in 2018—a bigger decline than any other zip code in the U.S. This is according to a new report from Redfin (redfin.com), the technology-powered real estate brokerage, which recently analyzed zip codes where home prices are down the most in the U.S.

Redfin's analysis is based on Redfin Estimate data on median home values in U.S. zip codes with more than 10,000 occupied housing units in October 2020, compared with October 2019. The analysis excludes Manhattan zip codes in New York City due to insufficient data.

"Relative affordability is luring some buyers into certain wildfire-prone parts of California, but Paradise is not one of them," said Redfin chief economist Daryl Fairweather. "Much of the town was destroyed by the Camp fire two years ago, and the pandemic halted a return to normal life, including a pause on rebuilding the nearly 14,000 homes that were lost in the fire. Most of the properties for sale right now are empty lots where homes used to be. The devastation caused by past fires and the looming threat of future wildfires are causing buyers to look elsewhere."

The 44839 zip code in Sandusky, Ohio experienced the next-biggest drop, with values falling 9.3% year over year to $185,000 in October. Another Sandusky zip code, 44870—home to Cedar Point amusement park, which was closed until July due to the coronavirus pandemic—saw the sixth-biggest home-value drop in October, with values declining 5.8% year over year to $89,000.

Next comes the 97201 zip code in downtown Portland, Oregon, where police officers and protestors have been clashing for the last several months. Home values there fell 7.5% year over year to $427,000 in October.

"Peaceful and violent protests have persisted in downtown Portland since the beginning of the summer, and they've been disruptive to people living in the area and driven homebuyers to other parts of the city," said Portland Redfin agent Nicole Arnold. "The civil unrest combined with empty office buildings, closed restaurants and remote workers' desire for large homes with a lot of outdoor space have caused home values to decline in the heart of downtown, where homes are relatively small and expensive."

Zip code	Metro area (neighborhood or town)	Median Redfin estimate (October 2020)	Year-over-year change in median Redfin estimate (October 2020)

CA-95969 (Paradise)	Chico, CA	$135,688	-20.5%
OH-44839 (Huron)	Sandusky, OH	$185,305	-9.3%
OR-97201 Portland)	Portland, OR (downtown	$426,998	-7.5%
LA-70802 LSU)	Baton Rouge, LA (downtown Baton Rouge,	$77,211	-6.3%
CA-94103 (SOMA)	San Francisco, CA	$985,152	-6.0%
OH-44870 Point)	Sandusky, OH (Downtown Sandusky, Cedar	$89,212	-5.8%
NY-11375 Queens)	New York, NY (Forest Hills,	$492,993	-4.8%
TX-77027 Village)	Houston, TX (Highland	$601,164	-4.5%
NY-11216 Brooklyn)	New York, NY (Bedford-Stuyvesant/Crown Heights,	$822,728	-4.4%
NY-11355 Queens)	New York, NY (Flushing,	$641,745	-4.2%
NY-11211 Brooklyn)	New York, NY (Williamsburg,	$1,530,091	-4.2%
HI-96815 (Waikiki)	Honolulu	$429,590	-3.4%
NV-89109 (Strip)	Las Vegas	$289,979	-3.3%
NY-11104 Queens)	New York, NY (Sunnyside,	$583,745	-3.3%
NY-11374 Queens)	New York, NY (Rego Park,	$507,772	-3.2%

Six of the 15 zip codes where home values have dropped most are in Brooklyn or Queens, with values dropping 4.8% year over year to $493,000 in Forest Hills and 4.4% year over year to $823,000 in Bedford-Stuyvesant/Crown Heights.

Declining home values in parts of New York City come as the coronavirus pandemic drives many remote workers out of densely populated neighborhoods and into more suburban and rural areas where they can find more spacious homes for less money.

"I've helped a few clients sell apartments in Queens to move to different areas because they're either working from home full time or only have to commute into the city once a week," said New York Redfin agent Martin Freiman. "A few people have moved upstate, and others moved to Florida and Pennsylvania, where they can find single-family homes with outdoor space for less money. Some of them were considering leaving the city for a slower pace of life even before the pandemic, and it pushed them to make a decision. Sellers are still adjusting to the new market, where homes are selling for a bit less than they used to."

"But I'm starting to see buyers regain interest in the city with the election behind us and promising vaccine news," Freiman continued. "Young people who want to be close to the action once the city reopens and empty nesters who are downsizing are taking another look at urban life."

The 11355 zip code in Flushing, Queens, where home values dropped 4.2% year over year to roughly $642,000, is home to Flushing Chinatown. Travel restrictions from China to the U.S. due to the coronavirus, along with difficulty securing loans for Chinese buyers, is one reason for falling home values in that area.

Home values also dropped in part of downtown San Francisco, where many remote tech workers have left the city, and parts of Waikiki and the Las Vegas Strip, tourist destinations that have fallen off in popularity due to the pandemic.

The home-value declines in certain parts of the country come while values rise in most of the U.S. as the pandemic fuels Americans' desire to move.

Property Tax Predictions for 2021

Property taxes are an expense many homeowners like to grumble about, but they serve an important purpose. Property taxes give cities and towns funding for things like schools, roadwork, and other public projects and facilities. And when cities lose out on tax revenue, local services can suffer, which can actually cause home values to decline.

The tricky thing about property taxes is that they have the potential to climb over time. In fact, many homeowners may be wondering whether they'll be in for a property tax hike in 2021. And while there's no way to say for sure, there is a good chance property taxes will rise across the board next year in the wake of the coronavirus pandemic.

Why many Americans could see their property taxes rise

Cities don't just collect revenue from property taxes. They also get money via the taxes businesses pay to operate there. And when that tax revenue declines, it can impact municipal budgets in a very meaningful way.

For this reason, many people might see their property taxes go up in the coming year. Thanks to the pandemic, thousands of small businesses have been forced to permanently close their doors. When businesses shut down, that tax liability goes away, leaving cities with less money.

But it's not just small businesses that have been impacted by the pandemic. Over the past eight months, dozens of well-known retailers have filed for bankruptcy and are making plans to close down stores. If that continues, it'll have the same impact: less local tax revenue.

Similarly, a number of malls are in danger of dying out in the near term due to the number of retail tenants they're losing. Malls and shopping centers are said to provide $400 billion in local tax revenue annually, according to the International Council of Shopping Centers, and losing them could drive property taxes upward when cities are forced to compensate.

Now to be fair, the impact of small business, retail, and mall closures may not be felt by homeowners immediately in 2021. But another big reason why property taxes are likely to rise is that they're calculated by taking a home's assessed value and multiplying it by its local tax rate. Home values have soared this year during the pandemic, despite the economic distress that's plagued the country since March. Low mortgage rates and limited inventory have created a huge surge in demand that's driven values up. If municipalities get aggressive in reassessing homes in light of this trend, higher property values will translate into higher taxes and a greater burden on individual homeowners, many of whom may be reeling from job or income loss themselves.

Homeowners can fight back

Homeowners who aren't happy with a property tax hike can always try appealing it. But they'll need to prove that their homes are over-assessed, and given the housing market today, that could be a difficult task.

Of course, higher property taxes won't just impact regular homeowners; they'll also impact real estate investors who own income properties or vacation homes. But given everything that's happened since March and the state of the housing market today, higher taxes are something it makes sense to gear up for.

CALIFORNIA

There's a Way for the City to Balance Density With Quality of Life

Almost no day goes by without news that the city of San Diego has approved yet another new plan that substantially increase densities and/or heights in many parts of the city. That should make us happy. We are very much in favor of increasing densities in appropriate locations. But every time we hear of a plan being approved, we cringe. Why?

For two reasons: First, because the new plans will open the door to huge density increases without any assurance that public facilities will keep up with development so that the "quality of life" in these neighborhoods will not get worse as the community grows. For example, this is what the recently adopted plan for Kearny Mesa tells us about implementation: "Public improvements described in this Community Plan vary in their scope. Some can be provided as private development occurs. Others require significant capital funding from city, state, regional, and federal agencies and funding mechanisms, such as impact fees for development." That's all.

Please note the vagueness. And please note that "significant" funding is needed from all levels of government that are, at this economic juncture, practically bankrupt. The zoning changes that markedly increase development density will take place automatically, but funding for public facilities, such as schools, parks, and libraries, is left to an uncertain future.

The second reason we cringe has to do with a lost opportunity – an opportunity for what is called land value recapture – that could bring additional public facilities and/or affordable housing to the city's communities. Land value recapture is based on the observation that plan approvals – a public action – considerably increase the value of land by increasing what can be built (e.g., higher-density housing). It stands to reason that some of the increased land value should be recaptured by the public in the form of community benefits in the affected neighborhoods.

Land prices have increased very fast in the recent past, making housing much more costly. In his new book, "A New Model for Housing Finance," local economist Murtaza Baxamusa points out that between 2012-2017 land prices doubled in California, because of land-use changes and other reasons, contributing significantly "to the doubling of housing values."

Who benefits is the landowner. To be clear: The value of the land has increased as a result of the City Council's approval of the plans, not because of any landowner activities. That is why John Stuart Mill, the classical economist, referred to such increases in land value as "unearned increments." He contrasted, with disdain, the productive industrialist and the idle landowner, whose land increases in value regardless of any input he or she might make. Similarly, we could contrast the landowner and the developer, who in producing homes provides a much-needed societal good.

How does land value recapture work? When a developer considers buying land for a prospective development, the price of the land is negotiated with the landowner. If additional community benefits are required to take advantage of the additional densities – thus increasing development costs – the developer will have to bargain with the landowner for a lower price. The landowner will continue to come out ahead, but not as much as without land value recapture.

For example, Keyser Marston Associates, in a report assessing the impact of increasing inclusionary housing requirements in the city of San Diego, found that in other cities they generated reductions in "land value as high as minus 30%."

So there you have it: If land value recapture were implemented, some of the land value increases resulting from public action (e.g., plan changes allowing increased density) would be returned to the public in the form of additional fees or amenities paid for by the developer. Land value recapture should be based on economic analyses, first to assess the increases in land values resulting from the increased densities and, second, on the basis of the results from the first analysis, to establish the feasible amount of additional fees (for parkland for example) or affordable housing, to be required (based on the various density increases allowed on each parcel in the plan area).

With so many plans already approved, the city of San Diego has missed many golden opportunities. But there will still be community plan updates and specific plans in the future. For example, the University community plan that is being updated right now is considering large density increases, especially in employment-generating land uses. Mayor Todd Gloria and the new City Council should seize the tool of land value recapture to help maintain the quality of life in San Diego's communities as they densify and infill.

Prop. 13 Still the Third Rail? Not Exactly

Proposition 13 is still the third rail of California politics," crowed Jon Coupal in the headline of an Internet posting days after the narrow defeat of November's Proposition 15, which aimed to take the property tax benefits of the 1978 Prop. 13 away from commercial and industrial property.

"Prop. 13 has almost mythical powers against those who would assail it," Coupal also told a reporter.

Not exactly. For after its loss, the sponsors of Proposition 15 immediately announced plans to bring it back again two years from now.

That's apparently OK with Coupal, the head of the Howard Jarvis Taxpayers Assn., named for the co-author of Prop. 13's property tax limits. He argued that this fall's timing could not have been better for Prop. 15, which embodied a concept called the "split roll."

Had the split roll passed, residential properties all over California would still have kept all current features of Prop. 13, which sets taxes at 1 percent of the most recent sales price, levies rising no more than 2 percent per year after that. Properties that have not changed hands since 1978 are taxed at 1 percent of their 1975 appraised value, plus that maximum 2 percent yearly increment.

This system sees owners of identical, side-by-side homes that sold at different times paying vastly different tax bills. Homes that stayed in the same hands for the last 45 years pay significantly less than neighbors who moved in more recently. The difference can come to tens of thousands of dollars each year.

Split roll leaves all this alone. Instead, the failed fall initiative went after commercial property, never the main focus when Prop. 13 originally passed. The emphasis then was on preventing seniors and other longtime homeowners from being priced out of their homes by the rapidly accelerating property taxes of that time.

Coupal claimed this fall was the ideal time for labor unions and leftists to go after part of Prop. 13. He also steadily contends that an attack on any part of Prop. 13 amounts to a threat to all of it. He noted that the fall election promised to draw record numbers of voters because of President Trump's presence on the ballot. It did. He claimed the ballot description by state Attorney General Xavier Becerra was misleadingly favorable to Prop. 15. It was. And he said labor unions were flush with money from dues with which to back the split roll.

And they did. The California Teachers Assn. alone put up more than $20 million.

But Coupal ignored the coronavirus pandemic. Some consequences of that plague, like its emptying out of many office towers, made very uncertain the $12 billion in new revenues split roll backers promised to local governments and schools. The pandemic also has shut down myriad businesses everywhere in California, many permanently. Increased commercial real estate taxes would have been passed through to surviving businesses and their customers, even as they tried to recover.

Those conditions mitigated against passage, and the measure lost by a slim 52-48 percent margin, or 670,000 votes out of almost 16 million cast.

If Prop. 13 were really a third rail, a type of railroad track that deals electric shocks to anyone who touches it, no one would want to bring it back. The losers would be nursing their wounds.

Instead, they can't wait to bring the split roll back in 2022. Said the Public Advocates non-profit law firm, "Rest assured the fight for adequate funding for our schools and communities is far from over…the total vote, with 7.5 million in favor, is cause for optimism. Californians know there is an unacceptable gap between the haves and have-nots in our state."

So it's virtually a sure thing the split roll will return in the next general election, with a different number and a different ballot description, but the same mission of revising current property tax law to make business property owners pay more of the freight.

Which demonstrates Prop. 13 likely has lost whatever mythical power kept it from being seriously challenged over its first 42 years.

CONNECTICUT

Supreme Court To Tackle Property Tax Issue

The Connecticut Supreme Court will hear arguments Friday about whether a nonprofit group home should pay property taxes or whether its activities are exempt. The case has implications for nonprofits and municipal tax revenue.

Rainbow Housing in Cromwell provides a community based support program for individuals who suffer from severe mental illness. The town decided it should pay property taxes in 2018 when it filed for an exemption, but the trial court agreed with the nonprofit and ordered the town to reinstate the exemption.

The town of Cromwell is appealing that decision.

In court documents the town argues that it was unclear from the application "what is happening at this property," and as a result Tax Assessor Shawna Baron denied the exemption.

According to court documents, the nonprofit told the assessor that individuals with mental illness are there "temporarily until they are stable enough to live independently."

But in order to qualify for the exemption Rainbow Housing, according to Cromwell, would have to prove it does not provide housing subsidized in part by the state government and that they are only using it for "temporary housing."

The home receives funding from the state Department of Mental Health and Addiction Services. However, the trial court found that "There is nothing in the stipulated facts to support the defendant's argument that DMHAS is subsidizing Gilead rather than assisting Gilead in its goal to provide a program for the benefit of men with mental health disabilities."

The town argues that even if the housing was not subsidized, it was not temporary enough to qualify for the exemption.

The trial court determined that "there is nothing in the stipulated facts to conclude that the treatment provided is anything but temporary. There is no merit to the defendant's claim that the use of 461 Main Street is not temporary."

The length of stay depends on the treatment progress of the individual, according to Dan Osborne, president and CEO of Gilead Community Services, which runs Rainbow Housing.

Back in 2018, Baron told CTNewsJunkie that some of the nonprofit organizations "don't know why they are exempt."

She said the law is clear that it needs to be used exclusively for the stated nonprofit purpose in order to continue to receive the exemption.

Baron said some of the exemptions — like the one for group homes — are a little "gray" and it would be nice if it were clearer, but "assessors don't generate legislation."

Since that time, the General Assembly has failed to pass legislation to help draw a bright line.

Several nonprofit organizations submitted briefs to the high court in support of Rainbow Housing.

The Connecticut Community Nonprofit Alliance, Inc. said the case is a matter of public importance that extends beyond the parties in this particular case.

"The Alliance believes that there are critical issues of public importance in the present appeal because acceptance of the defendant-appellant's argument that 461 Main does not qualify for an ad valorem tax exemption could have deleterious effects for similarly situated facilities, such as those who are members of the Alliance," Elliott Pollack of Pullman & Comley wrote in a brief. "Indeed, loss of the tax exemption for these facilities would impose significant unbudgeted present and future costs on these Alliance members, which in this era of constrained spending on, and diminished resources available for, social services for the mentally disabled, is of very serious concern."

Kathy Flaherty, executive director of the Connecticut Legal Rights Project, said the assessors "reading of the tax statute is strained. The actions of the town officials demonstrated the town's antipathy towards people with psychiatric disabilities."

The town of Manchester submitted a court brief too in support of Cromwell's appeal.

Manchester's Assessor John Rainaldi estimated that there are 89 properties in Manchester that can be characterized as "group homes." Of these 89 properties, 38 have received statutory property tax exemptions.

"However the granting of a tax exemption for a property necessarily results in a corresponding reduction of municipal tax revenues. The loss of tax revenue resulting from the granting of a property tax exemption means the loss must be offset by either shifting the financial burden to the non-exempt taxpayers in the municipality or by reducing or even eliminating certain municipal services," Manchester Assistant Town Attorney John Sullivan wrote.

"Manchester takes the position that it is for the Legislature rather than the courts to supply the statutory language that would support the interpretations made by the Trial Court; interpretations that impinge on the balancing act created by the Legislature and which interpretations are the Legislature's prerogative to make," Sullivan added.

In 2019, the General Assembly failed to pass legislation that would have clarified the issue of temporary housing and subsidization.

The Supreme Court will hear arguments in the case 9:30 a.m. Friday, Dec. 11.

COLORADO

Property owner wins tax battle with La Plata County

La Plata County has lost a legal battle against a property owner accused of using the agricultural-exempt tax status for its tax break, but not actually using the land for any ranching or farming activities.

Decades ago, the state of Colorado created a tax break for agricultural operators to provide assistance to the people who grow food and, as an added benefit, help preserve the open space that defines the Colorado landscape.

However, it's a constant effort for county governments to weed out people who declare the agricultural exempt status just for the tax break.

Every two years, the La Plata County Assessor's Office conducts land valuations, based on field investigations, land sales and other factors.

As part of that process, the Assessor's Office makes sure those claiming the agricultural tax status are in fact using their land to produce a product on the land and sell it for profit.

If that's found not to be the case, the Assessor's Office can delist the property. Landowners then have the opportunity to protest the decision.

Last year, the Assessor’s Office moved to delist a mostly undeveloped 186-acre property on the corner of U.S. Highway 550 and County Road 302, known as Vista Pacifica, about 10 miles south of Durango.

County Assessor Carrie Woodson said previously the property is split into 20 lots for residential development. However, only two lots have homes on them, and the rest of the property is vacant.

The vacant lots, Woodson said, had the ag status, but the Assessor’s Office moved to remove the listing because a herd of sheep grazed on the property only a couple of days out of the year.

“It (agricultural) really is not the primary purpose of that property,” she said at that time. “Based on that information, we felt that use (sheep grazing for a brief time) was incidental to the primary purpose of that property, and our stance was to remove (the ag status).”

The property owner, Randy Wilson, contested the Assessor’s Office, appealing to the state of Colorado’s Board of Assessment Appeals.

The board heard arguments in August and issued a decision last week in favor of Wilson, saying the presented evidence supports the claim the land is being used as a farm and ranch.

The board said the property contains a pasture, shop buildings, fuel tanks and a pond used to water livestock. The board also said there was evidence cattle are contained in fences on the property, and an irrigation ditch is in use.

The board said evidence was presented that 1,387 sheep grazed on the property for three days in 2018. Previous reports have said the sheep belong to Ignacio rancher J. Paul Brown.

The board also said the property was used to produce 118 bales of hay that were sold in 2019. It appears Wilson has water rights that were used to irrigate the property for hay and winter wheat, the board wrote.

“In sum, the subject property meets both the definition of a ‘farm’ and a ‘ranch,’” the board wrote in its decision. “Therefore, it is appropriate that the subject receive agricultural classification for tax year 2019.”

The Assessor’s Office was ordered to change Wilson’s land classification back to agricultural.

“We are disappointed and will be reviewing the ruling and weighing our options on moving forward,” Woodson wrote in an email to The Durango Herald.

Because of the agricultural status, Wilson pays about $2,500 in property taxes, Woodson said previously providing a rough estimate. Had the county prevailed, Wilson would have paid about $8,100 a year.

Colorado Rising State Action out to lower tax bills again

Colorado Rising State Action isn't done with lower taxes yet.

The conservative advocacy organization is dropping the language for a tax decrease on the 2022 statewide ballot.

The question would reduce the residential property tax assessment rate from 7.15% to 6.5% and the non-residential property tax assessment rate from 29% to 27%.

Colorado Rising State Action opposed the repeal of the Gallagher Amendment, Amendment B, last month. The 38-year-old constitutional constraint set an equation between the rates for homes versus commercial property.

The repeal passed with 57.5% approval.

The organization argued that the repeal represented a tax hike, since residential property owners were looking at a decrease to about 6.5% next year, because of Gallagher.

“Families and small businesses need a break - and the best way to help is by keeping property taxes low.” Michael Fields, executive director of Colorado Rising State Action, said in a statement Wednesday afternoon.

He said one of the main arguments to repeal Gallagher Amendment was that it hurt small businesses. The new proposal would ensure they see a lower assessment rate for businesses and families, rather than just promise one.

Once the language for the ballot question is formalized, supporters will have to turn in at least 124,632 signatures.

HAWAII

Property tax assessment appeals on the rise

More than twice as many property owners appealed their tax assessments this year than last year, according to the 2020 report of the county Real Property Tax Board of Review.

The five-member volunteer board, which devotes long hours evaluating property owners’ appeals of their assessments, reported 750 appeals on property totaling $660.7 million in real estate value, compared to 355 appeals in 2019.

Of the latest appeals, 407 were filed on East Hawaii property and 343 on parcels in West Hawaii.

Of the cases brought before the board, one was dismissed, 170 cases resulted in the reduction in the assessment or approval of an exemption by the board, 105 of the county’s assessments were sustained by the board, 340 resulted in a settlement between the county and the appellant, and 134 were withdrawn by the appellant, said Assistant Real Property Tax Administrator Keita Jo.

Jo said the increased caseload wasn’t a surprise.

“This was anticipated due to COVID-19 impacts starting in February and many being able to review their assessments in greater detail,” she said. “However, the date of assessment for last year’s assessment was January 1 and predated any potential COVID-19 impacts to the real estate market.”

Next year’s assessments may create a similar flood of appeals when notices go out March 15, she said.

“We are anticipating a large number of appeals for the 2021 assessments as the current COVID-19 crisis continues,” Jo said. “However, it should be noted that preliminary market data supports an increase in many sectors of the real estate market within Hawaii County for the upcoming assessments to be issued on March 15th.”

She said the division will continue monitoring sales in the coming weeks and months and will adjust accordingly.

The board recommended the county make the $50 appeal fee non-refundable. Currently, the fee is refunded to taxpayers who win their appeals. The change would require action by the County Council.

The board, for the eighth year in a row, also recommended the county do away with a tax exemption program known as the “non-speculative residential” program, a move advocated by both the tax board and the Real Property Tax Review Working Group,

A 2008 law closed the program to new property owners, but those who were grandfathered into the 1958 program may have an unfair advantage over other property owners who can’t participate, tax officials said. The program allows property owners to freeze their property value for five or 10 years by dedicating it to their own homestead use. The county’s homeowners property class and a homeowners exemption have taken the place of the program for all but 483 property owners.

Recommended steps include informing all owners currently with parcels in this program of the repeal for tax year 2019, allow all parcels currently in this program to automatically convert these parcels to the homeowner exemption program at the 2019 frozen value and explain the 3 percent cap would then be applied to the tax year 2020.

The impact to the real property tax revenue in tax year 2020 based on the current frozen non spec values would be $23,000 total. In addition, the county will save approximately $4,400 per year in staff time allocated to administering the program.

“The Board believes the Non-Speculative Residential Program should no longer exist because the homeowners class, exemptions and other programs have taken its place,” said the report, signed by the five members, Chairman Michael Hughes, Vice Chairwoman Emygrace (Grace) Reinhard and members Nelson Harano, V. Diane Blancett-Maddock and Michael Okumoto.

IDAHO

Inside Idaho's complicated property tax system

It's a familiar dread — seeing a letter from the county assessor in the mail. Even though it's not technically your property tax bill, seeing the assessed value of your home go up and looking at the estimated tax due can bring about anxiety for any property owner.

But an increase in value doesn't always mean an increase in taxes. Many other factors are at play, but the process of how property taxes are levied is often misunderstood and convoluted to explain. But let's try to make it more simple — starting with the most basic level.

What are property taxes for?
Property taxes are a local tax based on where you live. None of those dollars are allocated to the State of Idaho, unlike income or sales tax. Instead, the dollars fund things like schools, roads, emergency services, mosquito abatement and city and county government services.

Each county in Idaho uses a levy formula to determine the amount of property tax it will collect.

How is the property tax levy rate calculated?
Levy rates are determined by the total assessed value of all property located within the county. Each year, the county assessor conducts physical inspections of 20% of all properties due for inspection within the county and compares assessed values from the previous years to sale prices to determine the other 80%.

"Let's say we found the sales (prices) in an area were 6% more (than the assessed value)," Ada County Assessor Bob McQuade said. "We'd increase those values by 6% in 2021, and we'd do that to the other 80%."

During this assessment process, each taxing district across Idaho works to set budgets for the next fiscal year. This process typically happens during the spring and summer. Once these budgets go through a public hearing process, the entity votes to approve and finalize the numbers. From there, the budget numbers for each district are divided by the overall taxable value of all the properties in the county to determine a levy rate for each district.

For instance, let's say you live in an area within Ada County that includes taxes owed to the City of Meridian and the Meridian Library. The Meridian city levy rate in 2019 was 0.003083910%, and the library's rate was 0.000037985%. Both districts would be included in your property tax bill as part of your overall levy rate, once all of the applicable districts' rates are added together. That rate is then multiplied by the taxable value of your home to determine your specific property tax liability.

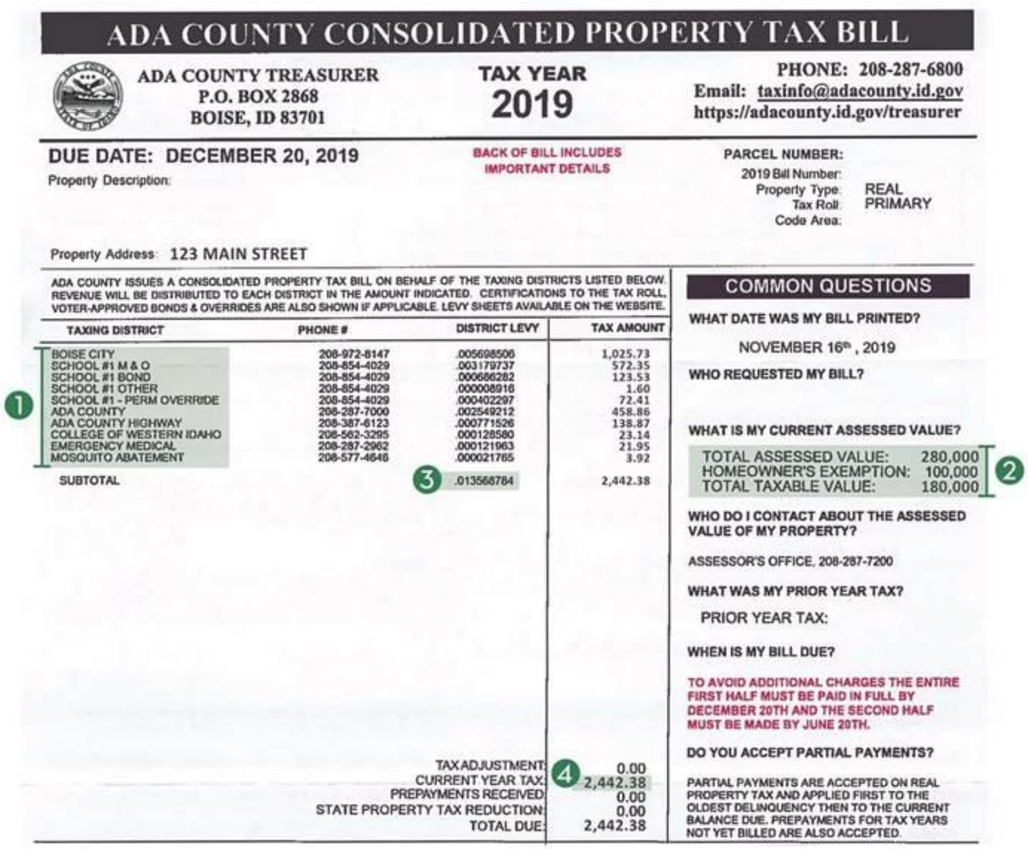
Let's lay out an example of one tax district's calculation with 2021 budget year numbers:

City of Meridian budget: $129.3 million
÷ Overall 2021 Ada County property assessed value: $73.22 billion
= Levy rate: 0.001765738%

If you own a home in Meridian valued at $350,000 – the assessor takes that amount and multiplies it by the levy rate for each district. (For simplicity, this example ignores the homeowner's exemption – another factor we'll explain in a moment). So, extending the example above:

Home value $350,000
x City of Meridian levy rate: 0.001765738%
= Tax owed: $618.00
This is repeated for each taxing district a property owner belongs to determine each owner's total tax amount owed.

Example of Ada County Property Tax Bill


ADA COUNTY CONSOLIDATED PROPERTY TAX BILL

ADA COUNTY TREASURER
P.O. BOX 2868
BOISE, ID 83701

TAX YEAR
2019

PHONE: 208-287-6800
Email: taxinfo@adacounty.id.gov
https://adacounty.id.gov/treasurer

DUE DATE: DECEMBER 20, 2019
Property Description:

BACK OF BILL INCLUDES IMPORTANT DETAILS

PARCEL NUMBER:
2019 Bill Number:
Property Type: REAL
Tax Roll: PRIMARY
Code Area:

Property Address: 123 MAIN STREET

ADA COUNTY ISSUES A CONSOLIDATED PROPERTY TAX BILL ON BEHALF OF THE TAXING DISTRICTS LISTED BELOW. REVENUE WILL BE DISTRIBUTED TO EACH DISTRICT IN THE AMOUNT INDICATED. CERTIFICATIONS TO THE TAX ROLL, VOTER-APPROVED BONDS & OVERRIDES ARE ALSO SHOWN IF APPLICABLE. LEVY SHEETS AVAILABLE ON THE WEBSITE.

TAXING DISTRICT	PHONE #	DISTRICT LEVY	TAX AMOUNT
BOISE CITY	208-972-8147	.005698506	1,025.73
SCHOOL #1 M & O	208-854-4029	.003179737	572.35
SCHOOL #1 BOND	208-854-4029	.000686282	123.53
SCHOOL #1 OTHER	208-854-4029	.000008916	1.60
SCHOOL #1 - PERM OVERRIDE	208-854-4029	.000402297	72.41
ADA COUNTY	208-287-7000	.002549212	458.86
ADA COUNTY HIGHWAY	208-387-6123	.000771526	138.87
COLLEGE OF WESTERN IDAHO	208-562-3295	.000128580	23.14
EMERGENCY MEDICAL	208-287-2962	.000121963	21.95
MOSQUITO ABATEMENT	208-577-4646	.000021765	3.92
SUBTOTAL		.013568784	2,442.38

TAX ADJUSTMENT:	0.00
CURRENT YEAR TAX:	2,442.38
PREPAYMENTS RECEIVED:	0.00
STATE PROPERTY TAX REDUCTION:	0.00
TOTAL DUE:	2,442.38

COMMON QUESTIONS

WHAT DATE WAS MY BILL PRINTED?
NOVEMBER 16th, 2019

WHO REQUESTED MY BILL?

WHAT IS MY CURRENT ASSESSED VALUE?
TOTAL ASSESSED VALUE: 280,000
HOMEOWNER'S EXEMPTION: 100,000
TOTAL TAXABLE VALUE: 180,000

WHO DO I CONTACT ABOUT THE ASSESSED VALUE OF MY PROPERTY?
ASSESSOR'S OFFICE, 208-287-7200

WHAT WAS MY PRIOR YEAR TAX?
PRIOR YEAR TAX:

WHEN IS MY BILL DUE?
TO AVOID ADDITIONAL CHARGES THE ENTIRE FIRST HALF MUST BE PAID IN FULL BY DECEMBER 20TH AND THE SECOND HALF MUST BE MADE BY JUNE 20TH.

DO YOU ACCEPT PARTIAL PAYMENTS?
PARTIAL PAYMENTS ARE ACCEPTED ON REAL PROPERTY TAX AND APPLIED FIRST TO THE OLDEST DELINQUENCY THEN TO THE CURRENT BALANCE DUE. PREPAYMENTS FOR TAX YEARS NOT YET BILLED ARE ALSO ACCEPTED.

Why do the levy rates fluctuate?
By statute, each taxing district is allowed to increase their property tax budget by 3% in a given year, plus a budget amount for new growth. Ada County Clerk Phil McGrane said on top of the already existing property value for the county, new construction is added to factor in the support that will be needed from city services and infrastructure for new growth.

For example, if a city's base budget was $100 million, but $3 million was added in the past year in new growth, the city would be allowed to increase their budget by 3% starting from $103 million rather than $100 million.

"When governments take the new construction roll, they're applying last year's levy to all that new growth that happened over the last year," McGrane said. "It's the way the law incorporates growth."

[Explain This to Me: How 2016 legislation shifted property tax burden from commercial land to homeowners]

That law mostly affects the Treasure Valley, where growth is expansive. The 3% increase is largely what affects property owners, in addition to supplemental or special levies and bonds. While the 3% is a built-in allotment taxing districts can take each year, if there is an amount over and above that percentage that a district wants to implement, it must be put to a vote.

Additionally, taxing districts that opt not to take the full 3% increase in a given year can take that percentage in a different fiscal year, under a provision called forgone taxes. Since the City of Boise has chosen not to take their full 3% in this budget year, the remaining amount that was not taken could be added to another budget year.

"That money is getting recorded as 'forgone,' and in future years, if there was a pressing need, the city could increase their tax base by more than 3% with a hearing," McGrane said. "They can't go backwards and collect, but moving forward they can do it as though they took (the 3%)."

But those factors aren't entirely what drives levy rates, McGrane said.

"People think the levy is what drives everything, but it's very fluid," he said. "We see these things confused and sometimes intentionally misused."

For instance, if a district points out that their levy decreased from the previous year, that doesn't necessarily mean it's because they were being more conservative with their budgets. It could be because the overall total valuation of the county increased. Conversely, as was the case during the Great Recession, levy rates can go up because overall valuation drops.

Is everyone paying more taxes because values are increasing?
No. At the moment, home values are rising faster than taxes. Even if your own home value goes up by 10%, McGrane said, the odds are your taxes would stay flat or go down, because other homes in the area could be rising by as much as 40% to 50%.

"So they're actually picking up a huge portion, since the levy is multiplied against the value of your home," he said. "Those houses that are rising in value super fast end up picking up more of the burden."

Similarly, homeowners are paying more in taxes at the moment because there is less demand and rising value attached to commercial properties, especially in Ada County, where there is a housing shortage.

"We just don't see the price appreciation in commercial versus residential," McQuade said. "Commercial is just not that volatile. … Residential is certainly paying more of the property tax burden than commercial."

What about the homeowner's exemption?

Homeowners in Idaho are entitled to an exemption of a flat $100,000 on the value of the home in which they reside, or 50% of the home's value up to $100,000, whichever amount is less. That is a recent change put in place in 2016. Prior to that legislative change, the exemption was indexed to a value that went up or down based on average home values. If the same index was in place today, the exemption would be more like $120,000, according to McGrane.

In most areas around the state, $100,000 is enough to provide some relief. But in Ada County, there are almost no homes left that are worth less than $200,000.

"The group that usually feels the biggest pain is homeowners whose value went from $200,000 or less to something above that, because up to that $200,000 you're just paying taxes on half your home's value, and past that it's less and less of a discount," McGrane said.

The biggest complaints come from the people with values between $200,000 and $300,000, he said, and if the index returned, it would provide the most relief for that group.

"I really opposed taking the indexing off, because (the exemption) just becomes less valuable as home values go up," McQuade said.

ILLINOIS

What Property Tax Changes Are Coming in Chicago?

A small hike for 2021 was approved by the City Council in November

Q. I'm looking at buying a townhouse in Chicago. I saw that property taxes are going up there. Can you explain the changes?

A. Mayor Lori E. Lightfoot outlined a property tax increase in the 2021 budget for the city of Chicago, which was approved by the City Council in late November.

The $12.8 billion budget includes a property tax increase of $93.9 million, according to public records.

The increase would raise property taxes about $56 a year on homes in Chicago, where the median home value is about $250,000, according to the city. Homeowners have already received a bill for the first installment of their 2020 property taxes, which is based on the previous year's total and an estimated increase.

A townhouse currently on the market for $1.875 million had a tax bill of about $28,652 in 2019, up from $28,166 in 2018. The first installment of the 2020 taxes on the home, due in March, is $267 more than the same payment the previous year.

After the first installment in March, the second is payable in August after the rates have officially been determined.

Chicago residents pay some of the highest taxes in the U.S., and homeowners have seen rates increase steadily over the last two decades.

Total taxes on residential properties have jumped 164% since 2000, from $1.33 billion to $3.51 billion, according to a study released by Cook County Treasurer Maria Pappas in October. The cost of living has risen 36% during that time, the report found.

The same townhouse that had a $28,652 tax bill in 2019 was charged just over $10,000 in 2000, according to Ms. Pappas' office. That's a change of about 186%.

Assessor offers hope for some Chicago property owners

There is a glimmer of hope on the gloomy real estate tax horizon for property owners in Chicago's wealthy neighborhoods - from River North and Old Town to Lincoln Park and Lakeview.

8-Dec-20 - Cook County Assessor Fritz Kaegi currently is sending "COVID-19 assessment adjustment letters" to thousands of Chicago property owners, noting that the pandemic has caused a "significant economic downturn and lower property values," depending on the property's type and location.

In Chicago, the COVID-19 assessment value reductions average 10 percent. They range from about 7.5 percent in Lakeview, Lincoln Park, and Uptown, and nearly 8 percent in Bronzeville, Loop, Old Town, River North, and South Loop. The reductions are about 9.5 percent in Rogers Park and West Ridge, and range as high as 12 percent on Chicago's South Side.

The assessor also reduced, in the range of 9.3 to 15.4 percent, the assessments on two-to-four-flat apartment buildings in Cook County.

Mayor Lori Lightfoot's 2021 pandemic budget will include a $93.9 million property tax hike as part of a $1.6 billion real estate tax levy. About $34 million of the real estate tax hike is linked to a future rise in the consumer price index.

The new budget ordinance requires property owners in the future to pay either an annual property tax increase of five percent or an increase based on the consumer price index, whichever is less. The Lightfoot administration says the increases will be approved annually by the Chicago City Council.

Lightfoot has argued the "modest" 1.3 percent real estate tax increase to homeowners is necessary. A bungalow owner with a property valued at $250,000 will see a tax bill increase of $56. But more expensive homes could see increases of hundreds of dollars.

Kaegi's sweeping COVID-19 assessment reduction move may create the illusion of tax relief, but it may not automatically provide lower taxes next year.

However, crystal ball gazing into the outlook for the expected 2020 property tax hike, payable in 2021, is cloudy, experts say.

"The property tax bill is determined by four factors - the assessment, the equalization factor or multiplier, the tax rate, and the exemptions," said Michael Griffin, a Chicago real estate tax appeal attorney.

Homeowners should review their exemptions because they can reduce their tax bill if they have the proper exemptions applied to the bill, Griffin noted. The three primary exemptions are the Homeowner's, Senior Citizen, and Senior Freeze.

The Homeowner's Exemption recently was increased to $10,000 from $7,000, and the Senior Exemption was hiked to $8,000 from $5,000. Those amounts are deducted from the equalized assessed value of a home to which tax rates are applied in order to determine the individual tax bill.

Also, more seniors can qualify for the Senior Freeze because the Illinois Legislature increased the maximum annual income to receive the freeze to $65,000 from $55,000.

Real estate taxes for 2020 are expected to rise when the second installment of the bill comes due in August 2021. However, predicting a hefty property tax increase this year really centers on two wild cards - the tax rate and the state equalization factor, which can't be challenged by taxpayers.

The equalization factor, or "multiplier," is established each year for Cook County to bring property tax assessments in line with other parts of Illinois. The factor is determined by the Illinois Department of Revenue.

The main engine that drives up property tax bills is the amount of money spent by local government. For example, homeowners who read their 2020 tax bills will see the continued increased spending for schools and police, firefighter, and teacher pensions.

Property owners who think they are over-assessed should appeal now, Griffin advises.

Contact the Cook County Assessor's office to find comparable properties or start the appeal process. The assessor is now concluding appeals for 2020. A taxpayer can file with the Cook County Board of Review and later with the Illinois Property Tax Appeals Board.

NEW HAMPSHIRE

The coronavirus and property tax abatements

An abatement may be a viable option, especially in the face of the pandemic

Nearly a year into the coronavirus pandemic, it is clear that while the long-term impact of the virus remains uncertain, a profound societal shift has occurred.

Whether the move to remote work has made companies rethink their need for commercial office space or whether the lockdown has accelerated the shift to online shopping – leaving storefronts, malls and big-box stores with significant vacancies and requests for rent deferrals from remaining tenants – pandemic-induced changes have caused substantial adjustments in real property use – and values – in New Hampshire and across the country.

For taxpayers, particularly those in the retail, hospitality and commercial office sectors, these shifts presents both challenges and opportunities.

The ability to abate

Property taxation in New Hampshire tax is determined on an ad valorem basis, meaning that such taxes are based on a percentage of the fair market value of the property – land and buildings – subject to taxation. Each municipality is required to regularly appraise all real property within its borders.

New Hampshire law requires that all assessments and resulting taxation be proportional. There are several nuances to this analysis – for example, it is necessary to consider all property owned by a taxpayer in the same municipality – and it is important to understand that the standard is not simply whether property is assessed at a value higher than fair market value, but whether it is assessed at a greater percentage of fair market value then the other properties in the same community.

This is usually determined by relying on the calculations (median equalization ratios) established annually by the New Hampshire Department of Revenue Administration that measure the general level of assessment in a municipality.

For example, a median equalization ratio of 95% means that, on average, all real estate in a particular municipality is assessed at 95% of its market value. Under this example, a taxpayer is entitled to an aggregate assessment that reflects 95% of its property's fair market value.

New Hampshire's statutory scheme allows "any person aggrieved by the assessment of a tax" to file an abatement request with the selectmen. Critically, RSA 76:16 provides a short time period to challenge the assessment following the issuance of the final assessments and year-end tax bills for a particular tax year, with requests for a given tax year filed in the following calendar year. Thus, tax year 2020 abatement requests must be filed with the selectmen or other municipal authority by March 1, 2021.

Selectmen have until July 1 to respond to the abatement request. If they deny the request, or if they do not respond, the taxpayer has until Sept. 1 to file an appeal in either the Superior Court in the county where the property is located or with the Board of Tax and Land Appeals, an administrative body with parallel jurisdiction.

Duty to abate

In both setting the initial assessment and considering any abatement requests that flow from it, the Board of Selectmen have certain obligations.

As the New Hampshire Assessing Standards Board has recognized, selectmen and retained assessors are obligated to ensure that "[p]rocesses must be well documented, transparent, credible, accurate and fair."

Similarly, the selectmen have independent legal and ethical obligations to ensure that assessments reflect fair market value and are proportional.

As noted in a recent BTLA decision, when a municipality discovers that property has been over-assessed based on subsequent information, subject to tests of materiality and reasonableness, the assessment must be abated. Accordingly, while the taxpayer will bear the burden of proof to show that his assessment was disproportionate, the tax abatement scheme is meant to aid, not hamper, redress.

Methods of valuation

If a taxpayer seeks to appeal a denial of an abatement request, they will have to prove – either in the Superior Court or before the BTLA – that their property is assessed at a greater percentage of the fair market value as compared to the other properties in the same community.

The determination of fair market value is generally accomplished by using any one or a combination of the various accepted appraisal techniques in valuing real property.

In brief, there are three main approaches used to determine fair market value: the income approach (or income capitalization approach); the cost approach; and the sales comparison approach.

The income approach can be used for income-generating properties, with the income expected capitalized at a given rate to determine the anticipated benefits the property may yield.

The cost approach estimates value by determining the cost required to replace or reproduce the property after depreciation.

The sales comparison approach compares the property at issue to other recent sales with adjustments in order to allow for comparisons.

The New Hampshire Supreme Court has never held a single valuation approach or specific combination of approaches as correct as a matter of law. The appropriate valuation approach often depends on the particular category of property.

Valuation issues and Covid

One only has to glance at the front page of any newspaper to see the impact the coronavirus has had on various sectors of the economy.

Real estate investment trusts show sharp drops in returns across almost all sectors, with commercial office space, retail and hospitality topping the list. Suffice it to say, the pandemic has led to declines in occupancy, declines in rent collection and numerous closures – both temporary and permanent. All of these factors, in turn, impact the valuation methods used to determine fair market value.

With respect to the income approach, it will likely be necessary for appraisers to take into account a radically changed environment, where property cannot generate as much income as it could prior to the pandemic. Restaurants, even if permitted to operate, will likely still need to operate with patrons further spaced out, thereby decreasing income. Downsizing in workforce and the need to socially distance reduces the income commercial office space property can generate. Similar restrictions cut across industries.

Under the cost approach, it is unclear how the pandemic may affect this valuation method. If land values and construction costs decrease, the cost to replace or reproduce property may similarly decrease. That said, the construction business has seemed to be fairly resilient to the downturn thus far. Similarly, land values have remained strong for the time being, particularly on the residential side.

The sales approach, even under normal circumstances, operates on a lag thus it will be particularly difficult to utilize in determining the fair market value of property affected by the pandemic. In the long term, the sale of properties happening now will reflect the changes we are now seeing – the expansion of online retail at the expense of brick-and-mortar, depressed values in the hospitality sector and decreased demand for commercial office space.

All that said, taxpayers considering filing for an abatement need to pay special attention to the industry they are involved in and the property at issue. The practical implications of the shutdown and the various public health measures – what it means for this business, in this industry, for this timeframe – need to be considered, as those factors will influence the relevant appraisal methodologies relevant to the specific property necessary for a supportable valuation.

Natural disasters

New Hampshire's statutory scheme for the abatement of taxes is codified at RSA 76. While "any person aggrieved" may file for the abatement of taxes, the statutory scheme makes a particular allowance for the proration of an assessment "whenever a taxable building is damaged due to unintended fire or natural disaster to the extent that it renders the building not able to be used for its intended use."

While the "natural disaster" provision of the law – RSA 76:21 – has not yet been interpreted by the BTLA or the courts, a colorable argument could be made that the coronavirus pandemic amounts to such a disaster, given that the pandemic prevented multiple sectors from using building for their intended use. Indeed, under Executive Order 2020-04, subsequently amended at least seven times, Governor Sununu declared a state of emergency due to the novel coronavirus.

Enacted in 2012, the RSA 76:21's legislative history indicates that it was enacted to remedy the "unreasonable situations in which taxpayers may be paying taxes for structures" that are not unusable. In the one Supreme Court decision interpreting the statute, involving a dwelling hit by lighting, the court observed that a taxpayer's rights to pursue an abatement were not precluded or limited by the "natural disaster" provision. Moreover, the court described it as offering a "mandatory prorated calculation."

Taken together, taxpayers affected by the coronavirus shutdown could consider pursuing relief not only under RSA 76:16, but also under RSA 76:21, where applicable.

This option seems particularly apt to those industries forced to partially or fully close for a period of time as a result of government orders. Moreover, while the tax abatement scheme generally applies to disproportionate assessments, RSA 76:21 suggest that even if property is not disproportionately assessed, that an abatement may be due. Indeed, the court noted in its Carr ruling that "illegality and irregularity are by no means the only causes for which justice requires that taxes should be abated," and that "other misfortunes must furnish equally good cause for abatement."

While the long-term impact of the novel coronavirus on real property use and values remains unknowable, the fact remains that filing an abatement may be a viable option for taxpayers who have suffered a disproportionate assessment, particularly in the face of the pandemic.

NEW YORK

New York Appellate Court Decision Stops Short of Settling Solar Property Tax Issues

Both renewable energy market participants and taxing jurisdictions in New York State have long been bedeviled by inconsistent and unclear real property tax policy and assessments.

A recent decision from the State's appellate court could have helped clarify the confusion, but stopped short of doing so.

In *Cornell Univ. v. Bd. of Assessment Review and Shana Jo Hilton, as Assessor of the Town of Seneca, New York*, 186 A.D.3d 990 (4th Dep't 2020), a case in which Cornell contended that a solar facility developed on its land was personal property, not real, and therefore not taxable, the Fourth Department Appellate Court instead held that solar energy systems are properly classified as taxable real property. The decision did not, as some in New York's solar market hoped it might, address how such systems should be assessed or whether different components of the solar facility should be treated differently – that is, whether the solar panels themselves, which the Internal Revenue Service has categorized as removable, personal property,[1] are real property, or whether only the racking and portions affixed to the ground should be designated as such. The Fourth Department also did not address an issue raised by the lower court – that an individual municipality that prohibits permanent affixing of the system to the ground by mandating decommissioning cannot declare that equipment to be permanent real property. Thus, uncertainty still reigns.

Background

The underlying litigation arose when Cornell University ("Cornell") brought a proceeding under Real Property Tax Law Article 7 challenging the Town of Seneca's taxable assessment of a solar energy system that was owned by a third-party, Argos Solar, LLC ("Argos"), who was not a party to the litigation.
As all solar systems do, this one consisted of solar panels, wires, a racking system, inverters, poles or pilings, a control system, and a concrete pad on which the equipment sat. The system was described by the developer as designed for disassembly and removal at the end of the contract term. All that was required for removal was unbolting and unplugging the panels, disassembly of the racks, and carting the equipment away. Following disassembly and removal, the equipment could be reused.

Cornell offered two primary arguments why the system was not taxable: (1) that Cornell is a tax-exempt educational institution; and (2) that the system constitutes personal property, not real property. In response, the Town of Seneca (the "Town") contended that (i) although Cornell is tax-exempt, the system was owned by Argos, a for-profit entity, and (ii) that the system met the definition of "real property" because it was intended to be permanently affixed to the ground. The lower court had rejected the Town's arguments and held the System was not taxable, primarily finding that the system should be deemed effectively owned by Cornell, a non-profit, and thus tax exempt. In dicta, the Court also noted the inconsistency between a town requiring a solar system to be removed and taxing it as a permanent fixture.

The Appeal

On appeal, the Town prevailed in its argument that the system was a fixture and therefore was real property. The Town also contended that Cornell's tax-exempt status did not prohibit taxation of the system because it is owned by Argos and not Cornell. As to the first issue, the appeals court held that the system is a fixture under both the Real Property Tax Law and common law, and therefore subject to real property taxation. Without addressing the potentially different status of the various components of the system, the Court held that the System is a fixture as defined by Real Property Tax Law § 102(12)(b), which provides that real property includes "[b]uildings and other articles and structures, substructures and superstructures erected upon, under or above the land, or affixed thereto."

Furthermore, the Court held that the system met all three elements of the common law fixtures test – annexation, adaptation, and intention. The system consisted of "nearly 1,600 piles driven directly into the ground and nearly 400 piles set on footings of concrete." The system and associated equipment were attached by nuts and bolts and installed on a concrete slab. Collectively, the manner in which the System was installed, the court held, confirmed that it was "annexed to the real property."
The Court also held that the second element of the common law fixtures test was met insofar as the system applied to the use and purpose of the land, which was dedicated to generating solar energy as part of the sustainability efforts and educational mission of Cornell.

Finally, the Court held that the third element of the test was met because the power purchase agreement between Cornell and Argos demonstrated that they desired and intended the system to be permanent for the term of the agreement. Notably, the removable nature of the system was not only required by the agreement, but was a condition of the Town Planning Board approval of the system installation at Cornell.

Cornell's Tax-Exempt Status Does Not Change the Analysis
While there was no dispute that Cornell is a tax-exempt educational institution, the Court reasoned that its exempt status did not impact its determination that the system constituted taxable real property. The agreement between Cornell and Argos separated ownership of the land from that of the system, and Argos is responsible for removal of the system and all taxes associated with ownership of it. Cornell has the option of purchasing the system at the end of the term of the agreement. Therefore, Cornell lacks the necessary level of "dominion and control" over the System to exempt the System from taxation.

Hodgson Russ Insights
The Court's holding in this case unfortunately does not improve the current New York state of affairs with respect to real property taxation of renewable energy installations. Cornell has filed for re-argument and leave to appeal to the New York State Court of Appeals, but the primary issues facing the industry are unlikely to be resolved there.

While most assessors are using the income capitalization approach, an effort to confirm that methodology as appropriate for renewable energy systems did not survive the last budget process, nor did an effort at centralizing determination of capitalization rates. Thus some assessors are still pushing the cost methodology despite it being disfavored by the courts. And numerous assessors are including intangible assets like environmental attributes in the income capitalization approach even though these are not real property income streams under New York law.

The limitations of this holding only further highlight the need for the legislature to bring certainty to the assessment of renewable energy projects. Unless the legislature either enacts a law that classifies components of a system as personal property or the State establishes a required PILOT amount or assessment methodology that fairly values the real property components of renewable energy and storage systems, taxing jurisdictions will continue to assess projects ad hoc. Furthermore, legislative action addressing the methodology for determining the taxable value of these projects will bring much needed clarity to project developers and municipalities alike, potentially avoiding protracted litigation.

[1] 26 CFR § 1.856-10(g); Internal Revenue Bulletin: 2016-29, *Example 8* ("The Treasury Department and the IRS have concluded that PV modules and inverters that are used in the generation of energy for sale to third parties do not qualify as [inherently permanent structures]…").

Having a Pied-À-Terre in New York City May Result in Higher Real Property Taxes

Identical bills are currently in committee in the NYS Assembly and Senate (S. 44, A.B. 4540). These bills (hereafter, the "bill") if enacted will raise the real property tax in New York City on residential properties that are not the owner's primary residence. This is commonly referred to as a "pied-à-terre tax." Whether the bill will become law, as is or with amendments, is uncertain at this time. However, some believe that a version of the bill will pass both the house and assembly with a veto-proof Democratic majority (i.e., even if Governor Cuomo would be inclined to veto the potential legislation, the state legislature could override the veto).

If the current version of the bill is enacted, the tax will become effective starting with the 2021-2022 property tax year. As proposed, the pied-à-terre tax would:

Impose an annual property tax of 0.5% to 4% on one-, two-, or three-family residences with $5 million or higher of fair market value determined based on the five-year average market value (using a comparable sale-based valuation method as determined by the Department of Finance). The tax would apply to the fair market value above $5 million.

Impose an annual property tax of 10% to 13.5% on residential condominium and cooperative units with assessed values of $300,000 or higher. The tax would apply to the assessed value above $300,000 as determined by the city assessor. Assessed values are typically lower than the property's fair market value.
Exemptions

The proposed legislation includes exemptions that are applicable to the following circumstances:

- The property or dwelling unit is the primary residence of at least one owner;
- The property is the primary residence of the parent or child of at least one owner;
- The owner of the condominium or co-op has obtained an appraisal report certified by a state-certified real estate appraiser or authenticated by a state licensed real estate appraiser, within the prior three years, showing that the residential property or dwelling unit has an appraisal value of less than $5 million; or
- The property is rented on a full-time basis to tenant(s) who use the property as their primary residence.

The Berdon State and Local Tax Team is monitoring the legislative status of the pied-à-terre tax Bill and will provide updates accordingly.

NYC lost $1.2B in real estate tax revenue

Sales of commercial and residential properties down 49% this year

The sputtering real estate market took a $1.2 billion bite out of New York City's revenue this year so far, a report by the Real Estate Board of New York found.

Sales of commercial and residential properties are down 49 percent for the year through November, Bloomberg reported. That in turn has led to a crippling decline in revenue for New York City, which depends on real estate taxes to keep the lights on. Revenue was down 42 percent for the first 11 months of the year compared with the same period last year, according to REBNY's analysis.

Tax revenue makes up 53 percent of the city's operating budget, although property taxes, which have remained steady, bring in far more money than real estate transfer taxes.

The announcement of a vaccine has provided a glimmer of hope that New York's economic engine will restart in the long-term. For now, with a renewed pause on indoor dining which started this week, as well as the possibility of another lockdown, the real estate market will likely continue to suffer — and drain the city's coffers.

"New York's economic crisis grows," said James Whelan, the group's president, in a statement. "From rental assistance and unemployment benefits to state and local aid, New York needs federal relief."

Congress has yet to finalize another federal stimulus deal, though the House and Senate remain in negotiations as of Friday morning.

The 'Pied-à-Terre Tax' Has a Messaging Problem

With a vetoproof supermajority in Albany, New York State Democrats are again pushing for a "pied-à-terre tax" on second homes in the city — causing everyone in real estate to freak out. The proposed annual tax on second-home condos and co-ops with an assessed value of $300,000 or more would bring in $390 million annually, according to the Independent Budget Office. But the bill isn't quite the blanket tax-the-rich measure it would appear to the casual observer: What it would actually do is tax those never-slept-in superluxury properties selling for $5 million or more, and not the Lincoln Center–adjacent studio where your suburban aunt and uncle stay after catching a play. Really what it needs is a better name — call it the Oligarch Tax.

The confused messaging is a result of the tax mechanism itself. It would seem that second homes with an assessed value over $300,000 would ostensibly include every condo and co-op in the city. But the "assessed" value of a property in New York City is not the market value. It's a number produced by a convoluted formula (you can see it here) that the city uses to levy property taxes — and it is dramatically lower than the price a home would fetch on the open market. The office of State Senator Brad Hoylman, who submitted the bill, says he settled on the $300,000 number because it loosely correlates to a condo or co-op that would sell for $5 million or more on the open market, and that would apply to about 5,500 second-home apartments, nearly all of them in Manhattan. (There are roughly 35,000 total condos and co-ops citywide with an assessed value over $300,000, but most are primary residences). For one-, two-, or three-family homes — your typical brownstone in Brooklyn or a house in Queens — the tax applies to homes with a market value of $5 million or more.

The real-estate industry, of course, hates it. "Maybe we shouldn't be creating an incentive for people to leave," real-estate lawyer Stuart Saft said in an interview with the Real Deal. (Saft's NYC Homeowners Coalition has been trying to convince people that the tax will apply to all homeowners.) But in this case we're by definition talking about rich people who already do not live in the city, so they can't really "leave," can they? Others, like Warburg Realty's Frederick Peters, have suggested the tax could do further damage to the housing market at a time when it's already suffering. But the ongoing deflation of one the most overheated housing markets in the world is not necessarily a bad thing for would-be buyers, and when the pandemic passes, the market is almost sure to recover. And if an extra property tax on extremely wealthy globe-trotters (who contribute to the city's affordability crisis) prompts them to sell the staggering apartment in a gigantic skinny tower at a loss — well, that's just more available inventory for people who actually live here.

NYS Will Begin A Study of Property Tax Exemptions

New York Governor Andrew Cuomo has signed legislation to launch the study of real property tax exemptions. Hudson Valley lawmakers were the prime sponsors of the bill they say could results in changes in tax status and savings for residents and municipalities.

The bill, sponsored in the Senate by Democrat Pete Harckham, will create a property tax exemption task force and directs the state's Department of Taxation and Finance to study and prepare a report on existing real property tax exemption laws with an idea that some exemptions may need to be reevaluated.

The task force will consist of seven members and include the Commissioner of Taxation and Finance, Comptroller and Attorney General or their designees; and one appointee each from the Senate President, Senate Minority Leader, Assembly Speaker and Assembly Minority Leader. Democrat Tom Abinanti sponsored the bill in the Assembly.

PENNSYLVANIA

Activists question whether wealthy universities should be exempt from property taxes

Changing its position, the University of Pennsylvania will donate $100 million in payments in lieu of taxes to help Philadelphia public schools

When the University of Pennsylvania said it would pay $10 million a year for 10 years to address environmental hazards in Philadelphia's public schools, Gerald Campano's reaction was complicated.

"Of course it's important that Penn at least recognizes the profound challenges that the School District of Philadelphia faces with things like lead poisoning and asbestos," Campano, a professor at Penn's Graduate School of Education, said. "But charity is not the same as social and racial justice."

For years, students, faculty members, teachers and activists have been urging the University of Pennsylvania, in Philadelphia, to pay PILOTS, or payments in lieu of taxes, in support of the city's schools, as many other universities do. And last month, the university announced that it would make such a payment, contributing $100 million to environmental remediation in the schools over the next decade.

"I wanted to do something that was citywide," Amy Gutmann, the university's president, told The Philadelphia Inquirer. "I wanted to do something that would have an immediate impact in these tough times."

As a nonprofit, Penn is exempt from property taxes, which public school systems rely on to pay teachers, nurses and counselors, as well as to finance building maintenance and buy learning equipment. In Philadelphia, public schools are experiencing even greater need now that city and state budgets have been hit hard by the coronavirus pandemic. According to Penn's announcement, the Philadelphia school district has $4.5 billion in unmet capital needs.

Activists say Penn's commitment is a step in the right direction but falls short of their goal to have the university pay PILOTs commensurate with the amount of property it owns.

"This victory is a testament to the strength of the movement by public school teachers, parents and students for equitable funding for their schools. It is also not the end of this fight."

Philadelphia Jobs With Justice, a pro-labor nonprofit, has been campaigning for this for years, and the movement gained added momentum in June, when Penn for PILOTs, the first campaign led by staff and faculty members, joined the effort.

"This victory is a testament to the strength of the movement by public school teachers, parents and students for equitable funding for their schools," said Devan Spear, the executive director of Philadelphia Jobs With Justice, in a press release. "It is also not the end of this fight. The immense wealth inequality and chronic public-school underfunding in our city requires a fundamental transformation in the way that wealthy institutions relate [to] surrounding communities."

The Penn for PILOTs group echoed this sentiment. Its statement said that the underlying problem "requires a system of public finance that ensures that the city's wealthiest institutions pay their fair share every year in perpetuity."

Both groups said they would continue to demand that Penn pay the 40 percent figure they deem appropriate as a payment in lieu of taxes. They estimate that if Penn paid property taxes on its holdings, it would owe more than $90 million annually, but that it should pay about $36.4 million each year. They suggest paying it into an education equity fund managed by the city council.

In Philadelphia, the effects of underfunding public schools are especially evident.

The School District of Philadelphia serves 203,000 students and has an annual budget of $3.38 billion. The Philadelphia Inquirer reported last year that it would cost $170 million to remove asbestos and lead paint and exterminate bug and rodent infestations in the school district's buildings. Students and parents have also raised concerns about inadequate numbers of nurses and counselors.

The coronavirus pandemic has added more costs, said Hannah Barrick, assistant executive director of the Pennsylvania Association of School Business Officials. These include additional teachers to enable smaller, distanced classes; more bus drivers to allow students to spread out; air filtration systems; plexiglass; hand sanitizer; and hotspots and laptops for students. The Philadelphia district is using a hybrid learning model.

With the state of Pennsylvania projecting a deficit this year, federal aid uncertain and residents wary of higher taxes, the options for funding are slim. "When you have school districts where there are large amounts of tax-exempt properties, it narrows the universe of opportunities for local revenue," Barrick said.

All 50 states exempt nonprofit institutions from property taxes. Some universities, such as Harvard, Yale, Brown and Boston University, make payments in lieu of taxes to their cities to help offset the cost of the public services they receive, like fire protection and sanitation, as well as to support public schools.

Harvard gave about $10 million to Boston in 2019, about $3 million less than what the city requested. Brown gave over $6.2 million in 2020 to Providence, Rhode Island, and recently created a $10 million endowment for public schools. Yale gives around $12 million annually to New Haven, Connecticut, and Boston University gave $6.3 million to Boston in 2019.

Nonprofit property tax exemptions originate from the idea that the government ought to subsidize socially desirable, charitable actions or services that the government would otherwise perform.

But since the 1970s, nonprofit universities have grown and municipal budgets have declined.

Also, some large universities with hefty endowments and real estate holdings have begun to operate more like commercial entities by partnering with for-profit companies, conducting business outside their educational mission and paying executives lavish salaries. This has led city residents and activists to show stronger support for PILOTs, calling them a way for universities to pay their fair share.

And as cities face tighter budget constraints and the universities within them continue to expand, tensions have surfaced.

About 70 colleges and universities made PILOT-style payments in 2011, according to the most recent data from the Lincoln Institute of Land Policy, a think tank that researches the use and taxation of land. But several institutions with billion-dollar endowments, such as the University of Southern California, Georgetown University, George Washington University, New York University and Rice University in Texas, do not make PILOTs and hold property worth billions of dollars.

When pressured to make PILOTs, universities have argued they already benefit the community through wage taxes, student spending in nearby businesses and community engagement initiatives. Activists say this is not enough.

Penn points out that its Graduate School of Education is involved in professional teacher development and student-teacher apprenticeships in more than 200 Philadelphia schools. And the university hosted about 50 summer programs in 2020 for Philadelphia students, their costs ranging from free to $8,495 per month.

“The benefits of the university extend globally [through] their research, educating students from around the world, but the cost of property tax exemption is borne entirely by city taxpayers.”

PILOT advocates also argue that, while the government subsidizes universities with tax breaks because of their social benefit, it’s difficult to identify exactly whom universities benefit and by how much.

“The benefits of the university extend globally [through] their research, educating students from around the world,” said Adam Langley, an associate director at the Lincoln Institute of Land Policy, “but the cost of property tax exemption is borne entirely by city taxpayers.”

But in most cases, there is no system in place to provide a framework for what an appropriate payment in lieu of taxes should be; the terms and conditions of PILOTs are often not made public, and some nonprofits may feel forced to make PILOTs out of fear of retaliation from the city. The National Council of Nonprofits, on its website, states opposition to PILOTs, citing nonprofits' charitable mission as a reason for preserving tax-exempt status.

Campano, of Penn's Graduate School of Education, leads a community-based education research initiative in South Philadelphia and sees the inequities in the city's public school system daily. In addition to needing facility maintenance and having inadequate numbers of nurses and counselors, schools lack appropriate services for families whose first language is not English, hindering communication with parents about their children's education, he said. Enough students qualify for a free or reduced-price lunch program that the entire district offers free lunch to all students.

Campano said he hopes Penn's new $100 million commitment "will be a catalyst into a larger national movement and a larger conversation about how to more equitably fund our public school children, especially during this pandemic, but really all the time."

Spear, of Philadelphia Jobs With Justice, said: "We're going to keep up the public pressure, building community support, making sure that the city council and the mayor hear us on this. … It's always a no until it's a yes."

Massive tax cut sought for TMI, as Exelon says closed nuclear power station isn't worth a dime

A year after the facility was de-activated, Exelon Generation Co. is seeking a massive property tax cut for its Three Mile Island nuclear power station.

In fact, the company is arguing in an appeal filed in Dauphin County Court that it shouldn't have to pay any real estate taxes on the hulking dead plant along the Susquehanna River in Londonderry Township.

TMI current value is less than zero, Exelon claims.

If that argument is accepted, the county, the township and Lower Dauphin School District would take a combined annual tax revenue hit of nearly $560,000.

The Illinois-based Exelon took the case to court after the county assessment appeals board refused to change the $18.25 million market value it has attached to the property for taxation purposes since 2007.

The firm claims TMI has no market value since the decommissioning because it is idle, essentially unusable and will be undergoing radioactive decontamination for decades that will cost hundreds of millions of dollars.

TMI is best known as the scene of the nation's worst nuclear power station accident in March 1979 when a partial melt-down occurred at the facility.

The shutdown of TMI was voluntary. In choosing that option Exelon said post-Marcellus Shale natural gas boom economics made the single-reactor station unprofitable.

If the court agrees with Exelon that TMI is not worth "at most, zero," the biggest loser financially would be Lower Dauphin School District, which receives $336,165 annually on the power station's current market value.

The county would forfeit $125,487 annually, the township would lose $91,250 and the county library system would give up $6,387.

Filing of the tax appeal comes as federal regulators reportedly are set to approve the sale of TMI's Unit 2, the reactor that experienced the partial meltdown in 1979.

PHILADELPHIA

Philly is set to create a new construction tax and make changes to a big property tax break in a win for Council President Darrell Clarke

Philadelphia is poised to enact a new tax on residential construction and to make major changes to the city's controversial property tax abatement program under a deal struck by City Council President Darrell L. Clarke and Mayor Jim Kenney's administration that paved the way for three bills to win approval from a Council committee late Tuesday night.

The legislation would be a major victory for Clarke, who has proposed using the revenue from the new construction tax and future reductions in the real estate tax break to finance $400 million in bonds for an ambitious antipoverty and affordable-housing plan he is calling the Neighborhood Preservation Initiative.

For city homeowners, it could mean a new tax equal to 1% of the value of new construction or any major extensions they make to their houses. For commercial property owners, it would mean a 10% reduction in the value of the 10-year real estate tax-break program.

The development industry, Kenney, and his political backers in the building trades unions were initially skeptical of the changes, which they feared would slow economic growth in the city. But the administration on Tuesday testified in support of the legislative package after reaching a compromise with Clarke that will exempt commercial properties from the construction tax and delay the implementation of reductions in the tax abatement, according to a City Hall source with knowledge of the deal who was not authorized to discuss it publicly.

"The administration appreciates the dialogue we've had with City Council on these bills," Kenney's deputy mayor for planning and development, Anne Fadullon, told lawmakers. "We believe it's a good balance of bills."

Amendments to the legislation were negotiated in private for hours Tuesday night, and the Committee of the Whole voted to advance the bills around 11 p.m. With approval from the committee, which includes all members of Council, the bills have a clear path to final passage.

The bills now head to the Council floor, where they could come up for final votes as soon as Dec. 10, at Council's last meeting before its holiday vacation.

The new construction impact tax, which was introduced by Councilmember Cherelle Parker on behalf of Clarke, would take effect in January 2022.

Finance Director Rob Dubow said the tax is projected to generate about $15 million in revenue by its second year, and would eventually rise to about $30 million per year. But if the new tax or other factors lead to a 25%

slowdown in residential construction, the tax would only produce $11 million in its second year, before rising to about $22 million in its fourth year, he said.

Four Council members — Republicans Brian O'Neill and David Oh, as well as business-friendly Democrats Derek Green and Allan Domb — voted against the tax.

The two other bills aim to amend the city's tax abatement program, which since the 1990s has incentivized development by allowing property owners to pay no real estate taxes on the value of new construction or renovations on commercial or residential buildings for 10 years.

Last year, amid calls from progressives and school-funding advocates to end the tax break, which disproportionately benefits wealthy property owners, Council cut the value of the residential tax abatement by roughly half, while leaving the abatement for commercial properties untouched. Those changes were to take effect at the end of 2020.

One of the bills, authored by Councilmember Bobby Henon, would delay the implementation of those changes for one year, and was approved by the committee in a narrow 10-7 vote. Domb and Green were joined in opposing the bill by the more liberal wing of Council, which includes all four freshmen — Jamie Gauthier, Kendra Brooks, Isaiah Thomas, and Katherine Gilmore Richardson — as well as progressive stalwart Helen Gym.

The other bill, by Clarke, would reduce by 10% the value of the tax abatement on commercial properties and will also take effect in January 2022. If adopted, the bill would initially produce about $1.3 million in annual revenue, before rising up to $5 million to $7 million per year, Dubow said. The committee approved that bill unanimously.

Tuesday's hearing offered the strongest sign yet that the legislation is headed toward passage. But the bills will still face opposition and could be changed again as they make their way through the legislative process.

Jerry Jordan, head of the Philadelphia Federation of Teachers union, testified that the coronavirus pandemic has already wreaked havoc with the School District's budget and delaying cuts to the residential tax abatement, as Henon proposed, will cost the district even more tax revenue.

The bill, he said, "demonstrates that our city is once again prioritizing wealthy developers over our school children."

On the other side of the debate, developers who begrudgingly accepted the compromise version of the legislation nonetheless warned that it could end Philadelphia's recent development boom.

Mo Rushdy, treasurer of the Building Industry Association, said his group supported the construction tax bill because it recognizes "an urgent need for affordable housing." But, he said, "we do not do so with any enthusiasm whatsoever. Many projects will no longer be feasible because of the increased costs."

TENNESSEE

Tyler Technologies to Provide Tax Billing and Collection System to Shelby County, Tennessee

Tyler to assist with property tax billing for state's most populous county

Tyler Technologies, Inc. (NYSE: TYL) announced today it has signed an agreement with Shelby County, Tennessee, for the County Trustee's Office to utilize Tyler's Munis Tax Billing & Collection™ solution. The office will use Tyler's solution to assist with Tennessee property tax billing and collections.

The Trustee's Office is currently using a dated legacy solution to handle its property tax billing, but it is not intuitive for staff and has limitations imposed by being hosted on-premises. The Trustee's Office is highly desirous of a more modern, cloud-based solution and ultimately selected Tyler because of its public sector expertise and footprint in the area.

"We are continuously looking for ways to bring more productivity to our staff and more effective service to our constituents," said Regina Morrison Newman, Shelby County Trustee. "We are confident that Tyler will help streamline tax billing and collections for our county through an all-inclusive but flexible solution."

Tyler's Munis Tax Billing & Collection solution will bring a number of new capabilities and benefits to Shelby County, including

- A comprehensive solution that can be customized specifically for the unique processes and requirements associated with Tennessee tax billing needs
- Managing the entire tax billing and collection process from computer-assisted mass appraisal (CAMA) imports and bill generation to collections
- Improved operational efficiency, responsiveness, and consistency of data and processes
- Real-time insight into business processes for strategic county decision-making
- Hosting through a cloud platform, which will bring increased security, built in disaster recovery, and increased application availability

"We're pleased to bring an efficient and comprehensive tax billing and collection solution to Shelby County to replace its legacy product that is no longer serving the county's needs," said Chris Webster, president of Tyler's ERP Division. "Our solution is developed to meet each state's unique property tax billing needs, which helps streamline processes for staff and the community they serve. And, by deploying a cloud-based solution, the county will see an increase in staff efficiency due to small and continuous feature set releases, making services more available to their residents."

Shelby County is the largest county by population and geographic area in Tennessee with a population of more than 930,000. Tyler also provides its Odyssey Case Manager™ and iasWorld® CAMA and assessment administration modules to the county.

About Tyler Technologies, Inc.

Tyler Technologies (NYSE: TYL) provides integrated software and technology services to the public sector. Tyler's end-to-end solutions empower local, state, and federal government entities to operate more efficiently and connect more transparently with their constituents and with each other. By connecting data and processes across disparate systems, Tyler's solutions are transforming how clients gain actionable insights that solve problems in their communities. Tyler has more than 26,000 successful installations across more than 10,000 sites, with clients in all 50 states, Canada, the Caribbean, Australia, and other international locations. Tyler was named to Forbes' "Best Midsize Employers" list in 2019 and has been recognized three times on Forbes' "Most Innovative Growth Companies" list. More information about Tyler Technologies, an S&P 500 company headquartered in Plano, Texas, can be found at tylertech.com.

TEXAS

Texas Tax Talk: 2021's Legislative Priorities

Texas tax was no exception to 2020's complications and uncertainties.

COVID-19 gave rise to important new tax issues such as whether the property tax temporary exemption for qualified property damaged by disaster applies to economic damage caused by a global pandemic — according to Attorney General Ken Paxton, it does not.(1)

Another such issue was whether appraisal review boards, whose members are often elderly, can force taxpayers to participate in video conference hearings rather than in-person hearings — they cannot.(2)

Some issues, like whether a taxpayer is entitled to a temporary exemption due to damage caused by COVID-19, are very likely to be litigated in 2021, although final determinations are unlikely until at least 2022, causing uncertainty to continue through the next year.

The unpredictability of the following year is not going to be limited to issues born in 2020; 2021 will bring its own batch of issues.

Texas' Legislature meets in the spring of every odd year, so speculation has begun about potential 2021 tax legislation. A critical threshold issue is how the Texas 2021 legislative session will look. The session starts next month, and it is not clear how the Legislature will operate.(3)

There are concerns that COVID-19 safety measures will limit the number of bills that receive serious consideration, which is not ideal in a session where the Legislature will need to tackle a multibillion-dollar budget shortfall. Even for bills that do receive serious consideration, it is not clear who will be in the building or how public hearings will take place.

Despite this backdrop of uncertainty, it is still likely that meaningful Texas tax legislation will be enacted in the 2021 legislative session. The following are some too-early predictions of issues that are likely to receive legislative attention.

Likely Legislative Issues

The 2021 legislative session will commence on Jan. 12 and adjourn on May 31. Prefiling of bills began on Nov. 9. Bills on some of the issues below have been prefiled. Additional bills will likely be filed in connection with these issues as the session progresses.

Chapter 313 Renewal

Chapter 313 — named for the chapter of the Texas Tax Code it occupies — is an important economic incentive available to Texas school districts. Texas has relatively high property tax rates and school district taxes account for as much as half of the total rate.

Through Chapter 313, school districts can attract development by offering large manufacturing projects a 10-year value limitation, fixing a taxpayer's property at a value which is often significantly lower than its market value.

Taxpayers often save millions of dollars under Chapter 313 agreements, which savings they share with the sponsoring school district under the agreements. Because Texas' school finance system guarantees districts a certain level of revenue, a school district will net more revenue with a Chapter 313 agreement than the district would without it.

Chapter 313 is set to expire on Dec. 31, 2022, so if Chapter 313 is not renewed during the 2021 legislative session, it will expire in 2022.

Sen. Beverly Powell, D-Fort Worth, has filed S.B. 144, which would extend the expiration date of Chapter 313 until Dec. 31, 2032. We expect S.B. 144 or a similar bill to attract a lot of attention. While Chapter 313 has been crucial in attracting over 400 large manufacturing projects — and their accompanying jobs and capital investment — to Texas, some have argued for limiting the program's scope or the types of projects it targets.

Swapping Property Tax for Sales Tax

In the 2019 legislative session, Rep. Andrew Murr, R-Junction, introduced H.B. 297, which would have eliminated school district maintenance and operations taxes in January 2022 and appointed a committee to study expanding Texas' sales tax to make up for the lost property tax revenue. The bill was passed by the Texas House of Representatives, but it did not get out of the Texas Senate Committee on Finance.

H.B. 297 likely did not get through the Senate because it had major issues. One major issue is that it eliminated the largest component of Texas property tax without offering a substitute. Instead, H.B. 297 would have created a committee to study the issue. In other words, H.B. 297 sought to solve a problem without offering a solution. And the solution is tricky.

The fiscal note to H.B. 297 stated that Texas would have to raise its sales tax rate 5.75% to offset the revenue lost from eliminating school district maintenance and operations property taxes. This would have given Texas the highest average combined sales tax rate in the country, with a state rate of 12%, plus a local rate of up to 2%.

Of course, raising the rate is not the only way to increase sales tax revenue. Texas could have expanded the sales tax base by eliminating exemptions or taxing additional services. Texas taxes all sales of tangible personal property unless exempt, but it only taxes a few enumerated services.

Again, H.B. 297 did not offer a plan to broaden the tax base, nor did it contemplate how to deal with issues associated with broadening the tax base.(4)

Regardless, H.B. 297 garnered a surprising amount of support from certain taxpayers and legislators, considering that swapping property taxes for sales tax would shift the overall tax burden from businesses to individuals and would be viewed by many as creating a more regressive tax system — property tax is generally thought to be less regressive than sales tax.(5) This is particularly the case given Texas' taxation of essential items, such as clothing and feminine hygiene products, that some other states exempt.

Despite these headwinds, there is a good chance that a bill expanding sales tax to buy down property tax rates will be filed this session. On Sept. 14, the House Ways and Means Committee issued Charge 2, which seeks public comments on "possible methods of providing property tax relief, including potential sources of revenue that may be used to reduce or eliminate school district maintenance and operations property tax rates."

Unequal Appraisal Property Tax Appeals

The Texas Constitution provides that "[t]axation shall be equal and uniform." To ensure that property taxation is equal and uniform, the Legislature enacted Texas Tax Code Section 42.26, which provides a remedy for unequal appraisals. The statute provides taxpayers with three separate avenues to prove an unequal appraisal.

Two of those avenues, Texas Tax Code Sections 42.26(a)(1) and (2), are often too expensive or complicated to pursue because they require taxpayers to conduct market value appraisals of many similar properties. As a result, the third avenue, Texas Tax Code Section 42.26(a)(3), is most commonly pursued. Section 42.26(a)(3) provides that a taxpayer is entitled to relief if "the appraised value of [its] property exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted."

Section 42.26(a)(3) does not provide any guidance on where the comparable properties must be located. There do not appear to be any published decisions where the comparable properties were located in a different appraisal district than the property at issue, but neither Section 42.26 nor the Texas Constitution place any limitation on where the comparable properties must be located.

S.B. 134, which was prefiled by Sen. Nathan Johnson, D-Dallas, would amend Section 42.26(a)(3) to clarify that the comparable properties must be located in the same appraisal district as the property at issue.

But it would also add a new subsection to Section 42.26 that would allow taxpayers to use comparable properties located in other Texas appraisal districts if "a reasonable number of comparable properties does not exist in the appraisal district" where the property at issue is located.

In other words, a taxpayer would first need to look within the appraisal district where its property is located, and if there are not enough comparable properties, it could look to other parts of Texas.

Allowing taxpayers to look to other parts of the state makes sense. Otherwise, many property types where there would not be comparable properties within the same appraisal district, such as power plants, would be denied an avenue for challenging unequal appraisals. It will be interesting to see if the legislature thinks S.B. 134 is expanding the pool of comparable properties — something the lack of case law suggests — or simply requires a taxpayer to look within the appraisal district before using considering comparable property located in other parts of the state.

Conclusion

Despite continuing uncertainty and challenges related to COVID-19, the Texas Legislature will likely maintain its recent focus on reducing the state's relatively high property tax burden. Related issues will likely include the structure of key property tax incentives to attract new investment and jobs, along with procedural and other changes to increase the equity of the property tax system. The extent to which limitations caused by COVID-19 impact the Legislature's activity and focus will be a interesting undercurrent as the 2021 legislative session develops.

(1) Tex. Att'y Gen. Op. KP-0299 (April 2020).
(2) Tex. Att'y Gen. Op. KP-0307 (May 2020).
(3) See Cassandra Pollock, The Texas Legislature meets in less than 100 days. Nobody knows how the session will look, The Texas Tribune, Oct. 6, 2020.
(4) See John Kennedy and Dale Craymer, Letter to the Honorable Dustin Burrows (September 14, 2020) (detailing issues with eliminating exemptions and taxing additional services).
(5) Id.

WASHINGTON, DC

Who Actually Owns the White House?

Things to Know About Executive Power Transition and Real Estate

Generally, no one likes to move in the middle of winter, but for newly elected and appointed officials in Washington, D.C., we are right in the middle of moving season. Inaugurations that involve a transition of power tend to bring a mix of new people and seasoned veterans into the mix. Regardless of what a Biden presidency may mean for real estate investors in the long term, there's one thing we know for sure: Some people will be moving to Washington, D.C. Let's take a look at what happens when we welcome a new president.

It's decorating time

The President earns $400,000 a year and is also given an expense account and a non-taxable travel account. While the president's income is taxable, he doesn't have to pay taxes on the other perks of power, including the White House and all of the chefs, housekeepers, and assistants, as well as private plane and helicopter travel. The president also has access to Camp David as a nearby country retreat.

When a president enters office, he and his family are given $100,000 for redecorating, but some, including President Obama, opt to pay for the redecoration on their own. The First Family are temporary residents of the White House and do not pay property taxes. The White House itself is a tax-exempt property. The Vice President and family live at One Observatory Circle, a residence on the grounds of the United Naval Observatory.

A city transitions

The shift to a new government doesn't usually dramatically change the Washington, D.C. real estate market. However, in early 2017, the market saw an increase in the purchase of luxury homes partly because President Trump's cabinet was wealthier and more likely to buy property in the area.

This year's transition comes as real estate remains at a premium. The October 2020 statistics from the Greater Capital Association of Realtors show that there were just 2.6 months of inventory available, which is up from 1.2 months a year ago. The median sold price in the area is $675,000, However' Bright MLS has seen a rapid uptick in available condos. In fact, new listings of condos and co-ops are up nearly 50% from one year ago.

"D.C. is a market where demand is dictated by shifts in governmental power," says Laura Dietzel, Partner and Real Estate Senior Analyst at RSM US LLP. "Fundamentals remain solid with overall low interest rates, a recovering job market, and improving virus outlook. DC continues to be a rental dependent market with homes for purchase in the CBD and surrounding areas within reach of the wealthiest residents."

Many who come to D.C. for a four-year (or shorter) job opt for a rental property instead of buying. The good news for them is that the rental supply in the District is strong. A presentation from Delta Associates pegged the stabilized vacancy rate in September at 7.8% up from 4.4% one year ago. Effective rent growth is down by 10.7%, and with 17,802 units in the pipeline over the next three years, it could stay that way.

"The D.C. rental market has been challenged by several headwinds: new projects coming online adding to the rental supply pool as renters exit the market; vacancies reached their highest ever recorded value at 8% average for D.C. with four and five-star properties most significantly impacted (11.6% vacancy), further demonstrating that those with financial wherewithal are seeking alternative housing options outside of the city," adds Dietzel.

In a year of remote work, many potential renters and buyers are opting to spread outside of Washington, D.C. That has strained the rental and condo markets inside the District. However, an influx of new jobs and new residents could be good news.

WISCONSIN

Wisconsin Municipalities May Not Appeal a Board of Review’s Reduction of Property Tax Assessment

The old adage tells us that you can’t fight city hall, but a recent decision from Wisconsin’s court of appeals, which handed a victory to property taxpayers who received a favorable decision from a board of review, teaches that sometimes city hall can’t fight back.

In *State ex rel. City of Waukesha v. City of Waukesha Board of Review*, No. 2019AP1479 (Nov. 18, 2020),a decision from District II written by Chief Judge Lisa Neubauer and joined by Judges Mark Gundrum and Jeff Davis, the court of appeals held that the City of Waukesha had no right to seek certiorari review of a decision by its own Board of Review to reduce the municipal assessor's valuation of real property.

In 2017, the City of Waukesha assessed a parcel owned by Salem United Methodist Church at $51,900, but the City raised that assessment to $642,200 in 2018 due to the church's having received and accepted an offer to sell the parcel for approximately $1 million. The church filed an objection, and the Board of Review largely accepted the church's position, reducing the assessment to $108,700.

When the City subsequently petitioned the circuit court to issue a writ of certiorari under Wis. Stat. § 70.47(13), the Board moved to quash the writ, arguing that the statute does not allow a municipality to appeal a board of review's determination. The Waukesha County Circuit Court rejected that argument, but the court of appeals reversed in a decision that carefully examined the statute's text.

The court held that § 70.47(13) clearly authorizes an unhappy taxpayer to seek review in a circuit court, but it also held that the statute has no parallel provision allowing the aggrieved municipality to do so. The subsection provides:

[A]ppeal from the determination of the board of review shall be by an action for certiorari commenced within 90 days after the taxpayer receives the notice under sub. (12). . . .

Given that "the statutory provisions [i.e., subsections (12) and (13)] spell out very clearly that the Board must only ensure that the taxpayer receive[s] the Board's decision and that the appeal time begins to run upon the taxpayer's receipt[,]" the court held that "[i]t would be uncommon, oddly random, and potentially vague for the legislature … to leave a party that allegedly has a right to appeal (e.g., the City) to learn of that right by an unspecified, unexpressed, and indirect means." Op. at ¶ 29.

The court did not think that the omission of a provision governing an appeal by the municipality was unintentional. It pointed out that the municipality has so much control over the assessment process and the board of review (including by appointing the board's members) that it makes sense that the legislature would see no need to give the municipality a chance for judicial review of the occasional loss, thereby imposing additional burdens on the successful taxpayer. Op. at ¶¶ 30-40.

The court reversed and remanded with directions to quash the writ and to dismiss the City's certiorari action.