

**Wirtz et al. v. Quinn et al.***Continued from page 1*

to the subject of the proposed law. The identified subject, however, may not be so expansive as to render the single-subject rule meaningless.

The appellate court held that Public Act 96-34 violates the single-subject rule because the proposed subject of "revenue" is too broad and indefinite and because not all of the subjects addressed in Public Act 96-34 have a logical or natural connection to "revenue." For instance, the Court discerned no natural or logical connection between the subject of "revenue" and amendments to (1) the University of Illinois Act requiring the University to conduct a study on the effect on Illinois families of members of the family's purchasing Illinois Lottery tickets, or (2) the Illinois Vehicle Code concerning truck load and weight restrictions. The appellate court

also found no connection between the subject of "revenue" and State quarterly revenue expenditure reports required under the new Capital Spending Accountability Law.

The defendants have filed a motion to stay enforcement of the appellate court's judgment with the Illinois Supreme Court. The defendants raised a number of arguments in support of their motion to stay, including (1) the serious adverse effects of the appellate court's decision on the operations and finances of the State of Illinois and (2) the appellate court's failure to consider the defendants' proposed (and possibly less expansive or vague) single subject of "capital projects initiative" under the *Illinois Jobs Now!* program.

On February 1, 2000, the Illinois Supreme Court stayed enforcement of the appellate

court's decision. The defendants filed their leave to appeal the appellate court's January 26, 2011 decision with the Illinois Supreme Court on February 16, 2011. ■

1. In addition to a violation of the single-subject rule, plaintiffs allege that the legislation violates other provisions of the Illinois Constitution, including the uniformity clause, the requirement that an appropriation bill be limited to the subject of appropriation, the requirement that public funds be used only for public purposes and the requirements of separation of powers and effective date of laws.

2. The plaintiffs did not challenge Public Act 96-36, which increases the State's bond authorization to fund *Illinois Jobs Now!*, or Public Act 96-40, allowing capital funds for a zoological park downstate. These two acts are not expressly contingent on Public Act 96-34's becoming law.

**Recent changes to the omitted assessment tax law***By William Seitz*

**P**ublic Act 96-1553 amends the Property Tax Code (35 ILCS 200/) provisions that deal with the Cook County Assessor valuation procedures (Sections 9-260 to 9-270) and with the Cook County Board of Review powers and duties over omitted property (Sections 16-135 and 16-140).

Each of these amendments attempts to give taxpayers more meaningful appeal opportunities, and an opportunity to put the Cook County Assessor on notice of omitted assessments.

**Prior law—Need for changes**

Under prior law, the Assessor had entirely discretionary authority to issue omitted assessments at any time he chose and for as many years back as he solely decided. Even if a diligent taxpayer attempted to specifically notify the Assessor of an error in his assessments, the taxpayer always had the uncertainty of an omitted assessment that could come at any time – or not at all. This was not fair to the affected property owner.

It was also not fair to all taxpayers. If the Assessor fails to assess a property, every other taxpayer pays the difference. It is in ev-

eryone's interest for these problems to be addressed promptly. When a property's assessment is omitted from the property tax rolls, and the Assessor fails to act to clear it up, the credibility of the entire property tax system is undermined. Every taxpayer should pay their fair share of taxes, and no more.

**Public Act 96-1553—A comprehensive solution**

Public Act 96-1553 creates a comprehensive solution: (1) to put a check and balance on the Cook County Assessor's authority by giving the Board of Review authority to review the initial assessment before his assessment is finalized and tax bills are issued; (2) to provide taxpayers more protections so that the Assessor is not the sole arbiter of whether he has been put on notice; and (3) to deal with the whole policy issue of whether the Assessor has "no choice" but to do an omitted assessment by placing a limitation on the number of back years. This is because there are some circumstances where it is not equitable to do an omitted assessment in the first place.

**Improvements and protections in new law****If Notified—Limitation on Back Years.**

Under Public Act 96-1553, if the owner of the property gives notice of the Assessor's failure to assess land, improvements, or both, there is a limitation of 3 years prior to the current year to do omitted assessments. This protects honest and diligent taxpayers.

Those are taxpayers that are actually taking the initiative in informing the Assessor of an error in his assessments. It is in the public's interest for these errors to be corrected as soon as possible.

Further, in many instances, the Assessor already has all the information in his office to identify and clear up these problems, but in the past had failed to do so. Under prior law, only the taxpayer bore the responsibility for any such failures in how the Assessor was operating his office.

Prior law was very unfair to the diligent taxpayer - the Assessor could choose to bunch up unlimited multiple numbers of years at a single time. This is particularly unfair in that the entire resulting tax bill would need to be

paid in a short time frame. This is not a good circumstance, creating hardship.

There were significant public policy issues raised by practices under the prior law. This hardship could lead to bankrupting businesses, particularly small business owners, and individual taxpayers. It was particularly punishing to those who have attempted to clear up an error that is entirely within the Assessor's control to address.

**Better Notice and Opportunity To Be Heard By the Assessor.**

Under Public Act 96-1553, the taxpayer is afforded more notice and opportunity to be heard. The notice of the assessment of omitted property is required to provide more information and allow more opportunity for the taxpayer to contest the proposed assessment of omitted property.

**Meaningful Review of Assessor's Decision.**

Under prior law, there was no review of the Assessor's decision to either: (1) assess omitted property in the first place; and (2) the assessment value as determined by the Assessor.

Public Act 96-1553 contains practices and procedures for oversight review by the Cook County Board of Review. This gives the taxpayer protections that they did not have previously.

The Board of Review has been given authority under Section 16-95 of the Property Tax Code by the legislature to "...review the assessment and confirm, revise, correct, alter, or modify the assessment, as appears to be just...". Under prior law, the Board of Review's authority did not extend to an omitted assessment issued by the Assessor. The taxpayer was forced to pay the tax bill based on the assessment imposed by the Assessor. The changes in Public Act 96-1553 now extend that authority to omitted assessments.

Under Public Act 96-1553, before the omitted assessment is finalized, and tax bill is issued, the taxpayer is given the opportunity to file a complaint with the Board of Review. The Board of Review will serve as a check and balance on the Assessor's power to issue omitted assessments. Under prior law, there was none.

**Affirmative Defenses to the Omitted Assessment Being Issued.**

Under prior law, the taxpayer could not effectively put the Assessor on notice of the existence of errors in his records, even if he

formally notified him of the error or the Assessor already had all the records he needed to identify the omission himself.

Public Act 96-1553 creates 7 affirmative defenses to the Assessor's intent to list property as omitted. These defenses limit the Assessor's unlimited and discretionary power to assess that existed under prior law.

Each affirmative defense to the omitted assessment is based on the Assessor being on notice but failing to assess a property:

The assessor failed to notify the board of review of an omitted assessment;

The property was last assessed as unimproved, the owner of such property gave notice of subsequent improvements and requested a reassessment as required by Section 9-180, reassessment of the property was not made within the 16 month period immediately following the receipt of that notice;

The owner of the property gave notice as required by Section 9-265;

The assessor received a building permit for the property evidencing that new construction had occurred or was occurring on the property but failed to list the improvement on the tax rolls;

The assessor received a plat map or survey containing the omitted property, but failed to list the improvement on the tax rolls;

The assessor received a real estate transfer declaration indicating a sale from an exempt property owner to a non-exempt property owner, but failed to list the property on the tax rolls; and

The property was the subject of an assessment appeal before the assessor or the board of review that had included the intended omitted property as part of the assessment appeal and provided evidence of its market value. ■



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