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Real estate tax assessments, process can confuse homeowners

by GARY R. GEHLBACH

Underlying Benjamin Franklin's time-tested observation that "The only things certain in life are death and taxes" are the annual real estate tax bill and, for those less fortunate, the annual assessment change notice. Aside from the amount of tax due, what do these documents mean and how does one lawfully object?

Real property taxes in Illinois are based on laws found in the Illinois Property Tax Code and other statutes. The Property Tax Code itself runs 188 pages. Generally speaking, real property taxes are based on the property's assessed value, a "State Equalization Factor", any applicable exemptions and the applicable tax rate,

■ Assessed Value

The assessed value for property out-

side of Cook County (which is large enough to command its own system) is supposed to be one-third of the property's market value. How that value is determined varies and includes a value attributable to the land and a value for the improvements. The three methods for determining a property's market value are the cost approach (which is essentially based on the cost to replace the improvements, less a depreciation factor), the income measure (net income divided by a rate of return) and the comparable sales approach.

For residential improvements, the Lee County Supervisor of Assessments, for example, uses a software program that includes a depreciation component and a grading system depending on the property's quality and condition.

When examining a property's assessed value, the taxpayer first should determine whether that value exceeds one-third of the property's true market value. If it does, it would probably behoove the taxpayer to ask the township assessor to review the situation and, barring relief at that level, consider filing a complaint with the county assessor's office, asking the board of review to reconsider. However, there are fairly rigid time frames for filing complaints with the county board of review. As a rule, objections must be filed within 30 days of the date of notice of an assessment change.

A number of assessments vary from the one-third rule. Farmland, for example, is assessed based on a five-year average of income and expense data for each soil type and long-term mortgage

Real estate taxes continued on page 3

Inside

Illinois death tax.....	2
New bankruptcy rules.....	2
Mileage reimbursement rates	2
Homebuyers' tax credit	4
In Print and At the Podium/ Deals and Decisions	4
Our holiday wishes to you	4

IRS to audit companies to enforce employment tax compliance

by DOUGLAS E. LEE

In early 2010, the Internal Revenue Service will begin auditing random employers to determine the employers' compliance with federal employment tax laws. The program, which is one of the largest audits of employers in the last 25 years, will target approximately 2,000 employers in each of the next three years.

The audits come on the heels of a Government Accountability Office recommendation that the IRS investigate employers' improper classification of employees as independent contractors. While worker classification will be the IRS's primary focus, the audits also will review tax issues related to executive compensation, fringe benefits and reimbursed expenses. These tax issues include the reasonableness of compensation paid to executives who receive both wages and dividends and whether employers are properly reporting the use of company vehicles, employee discounts, educational assistance and stock-based compensation.

The IRS has assigned between 200 and 300 specially trained agents to perform the

Audit continued on page 2

Illinois death tax poses problems for estate planners

by GARY R. GEHLBACH

For married couples with combined taxable estates of more than \$2 million, the Illinois estate tax looms ominously.

An unintended positive consequence of the recession is that fewer estates are subject to estate tax. Additionally, as a result of tax legislation passed in 2001, the federal estate tax has now disappeared for the vast majority of estates. For persons dying in 2009, the federal estate tax exemption is \$3.5 million.

That same 2001 tax act would eliminate the federal estate tax in 2010 but replace it with carryover basis, which would impact millions of estates. Fortunately, however, few if any tax prognosticators expect this law to hold. Several bills have been introduced in Congress this year to apply the \$3.5 million federal estate tax exemption indefinitely and quash any notion of the ill-conceived carryover basis.

However, perhaps lost in the euphoria

of the significant increase in the federal estate tax exemption to \$3.5 million is the fact that the Illinois estate tax exemption remains \$2 million.

The Illinois estate tax for persons dying in 2009 (and, presumably, thereafter, although the Illinois General Assembly has not yet addressed the situation post-2009) is quite onerous. To the extent a decedent's net Illinois taxable estate exceeds \$2 million, the tax rate starts at a little over 31 percent.

Considering that the Illinois estate tax is still deductible for federal estate tax purposes and that the federal exemption is \$3.5 million, a net taxable estate would need to exceed \$3,729,200 before incurring a federal estate tax. That is, a net taxable estate of \$3,729,200 would result in an Illinois estate tax of \$229,200. Deducting that amount from the net taxable estate leaves a net federal taxable estate of \$3.5 million, which is precisely the amount of the federal estate tax

exemption.

For net taxable estates in excess of \$3,729,200, the federal estate tax rate is a flat 45 percent. This is in addition to the Illinois estate tax.

This is the first year since the current iteration of estate tax in which the federal and Illinois exemptions are different. Most estate plans, except perhaps for those structured or revised during the past couple years, did not contemplate a distinction between the federal and Illinois estate tax exemptions. Therefore, couples with older estate plans and combined estates likely to exceed \$2 million should have their estate plans reviewed. With proper planning, both the federal and Illinois estate taxes should be able to be eliminated, or at least substantially reduced, upon the death of the first spouse. However, without proper planning, couples may find that, upon the first spouse's death, significant Illinois estate tax may be payable.



Courts change bankruptcy rules

by MEGAN G. HEEG

Effective Dec. 1, 2009, creditors and debtors who enter into reaffirmation agreements are required to file with the bankruptcy court an additional Reaffirmation Agreement Cover Sheet that discloses, among other things, the loan's annual percentage rate, the repayment terms, the collateral's current market value and, if the creditor believes the debt is nondischargeable, a declaration setting forth the creditor's basis for the contention. The cover sheet must also include sufficient other information for the court to determine whether the proposed reaffirmation agreement is an undue hardship for the debtor.

In addition, effective Dec. 1, 2009, many bankruptcy deadlines were amended, changing the dates for debtors, creditors and other parties in interest to take certain actions in bankruptcy cases. Although these changes will simplify the deadline rules, some of the deadlines now are shorter. Given the new rules, parties in bankruptcy cases are well served to identify all deadlines at the start of their involvement in order to guarantee that the revised deadlines are met.



Audit ...

Continued from page 1

audits and will target profit and non-profit employers of varying sizes and in a wide range of businesses.

The audits presumably will begin with reviews of employment tax and other informational returns. Employers accordingly would be wise to collect and organize their returns and to proactively review both their relationships with independent contractors and their current payroll procedures.



Mileage rates change

by GARY R. GEHLBACH

The IRS has announced that the rate for mileage reimbursement for business use of a motor vehicle will be only \$0.50 per mile beginning Jan. 1, 2010. This is a reduction of \$0.05 from the \$0.55 rate presently in effect. This is a reduction of over nine percent.

An even larger reduction has been announced for mileage when deductions are allowed for obtaining medical care or relocating one's residence. That rate for 2010 will be \$0.165, down from \$0.24 in 2009.



Real estate taxes . . .

Continued from page 1

interest rates. The State, using data generated by the University of Illinois, annually produces a formula for each of the approximately 800 soil types, and the assessed value equals the hypothetical net income for that soil type divided by Farm Credit Services' long-term mortgage interest rate. The result is that most farmland in this part of the State has an assessed value between about \$100-\$200 per acre, which is considerably less than one-third of the land's market value.

Home improvements also can be assessed at less than their value, with up to \$75,000 in home improvements being eligible for a four-year exemption. The amount of the exemption in each of the four years is one-third of the amount of the home improvements.

Recognizing that many older persons live on fixed incomes and struggle to pay increasing real estate tax bills, the General Assembly has provided a "Senior Freeze" for persons over age 65 whose countable income is less than \$55,000. This benefit, for which a taxpayer must apply and certify his or her income annually, freezes the assessed value, but not the amount of real estate tax.

If the property is in an enterprise zone, real estate taxes on new improvements generally are wholly or partially abated by most if not all of the taxing authorities for a certain period of years.

The State monitors assessed values on a township-by-township and county-by-county basis by comparing reported sales with assessed values. When real property is sold, a Real Estate Transfer Declaration is required to be filed with the deed, and a copy is sent to the Department of Revenue for this purpose.

■ Equalizers

The assessed value is subject to a local multiplier, which for residential property in the corporate boundaries of the city of Dixon is 1.08 percent for 2009. Notice of this multiplier, however, might not be included in an assessment change notice. In the case of the multiplier being applied to residential properties in Dixon for 2009 taxes, notice of the local multiplier appeared near the beginning of the assessment notice published in the *Telegraph*.

The State also applies a multiplier, designed to equalize assessed values throughout Illinois.

■ Exemptions

Several exemptions exist to reduce assessed values. The major exemptions are the Owner-Occupied Exemption, the Senior Homestead Exemption, the Disabled Person's Exemption and the Veteran's Exemption. The Owner-Occupied Exemption,



which for 2009 is \$6,000, requires that the owner occupy the property as his or her primary residence. This exemption also applies to tenant-occupied residences, if the tenant is responsible for paying the real estate taxes.

The Senior Homestead Exemption, which currently is \$4,000, applies to property owned and occupied by persons at least 65 years of age. The Disabled Person's Exemption is worth \$2,000. The Veteran's Exemption is tiered and based on the level of the veteran's disability. If the homeowner is 50-75 percent disabled, the exemption is \$2,500. If the person is at least 75 percent disabled, the exemption is \$5,000.

■ Objecting

In some instances, taxing bodies levy taxes for impermissible purposes or exceed their statutory authority. However, unless a taxpayer has knowledge that a taxing authority did not follow the prescribed procedures of adopting its tax rate or that the rate is not authorized by law, the taxpayer's recourse is to challenge the property's assessed value. Two statutory bases exist for objecting to the assessed value: either that the assessment is higher than the assessment of comparable property or that the property is over-valued. The former basis, if successful, might result in the taxpayer receiving relief for one year, while the latter basis might reduce the taxpayer's property tax bill for many years.

In many instances, the taxpayer should first contact the local township assessor. Note, however, that the local assessor and the county assessor lose their authority after the 30-day period following the county assessor's notice of changes in assessed values. The deadline to file an appeal with the county board of review is the end of that same 30-day period.

Complaints with the county board of review, in addition to being timely filed, should include a basis for the objection and evidence to support the taxpayer's contention. The complaint forms require the taxpayer to assert the assessed value that the taxpayer believes to be correct, and that contention should generally be supported by an appraisal report or other evidence that the assessor's value is incorrect.

The county board of review usually will review the complaints filed and either affirm the assessor's value or alter that value. Notice is then sent to the taxpayer, and the taxpayer, if not satisfied, may request a hearing before the board of review.

If after a hearing before the board of review the taxpayer still believes his or her property is over-assessed, the taxpayer may file an action before the State Property Tax Appeal Board and, eventually, before the Circuit Court.



Federal government extends homebuyers' tax credit

by Emily R. Vivian

With winter around the corner and the expiration of the first-time homebuyer tax credit looming, the future of the real estate market was questionable. However, President Obama in November signed the Worker, Homeownership, and Business Assistance Act of 2009, which extends and liberalizes the homebuyer tax credit.

The Act extends the tax credit for first-time homebuyers for purchases through June 30, 2010, as long as the purchaser enters into a written contract to purchase before May 1, 2010. The credit for these purchasers is the lesser of \$8,000 or 10 percent of the purchase price.

First-time homebuyers are not the only persons affected by the Act. The Act also provides that a person may claim a homebuyer credit if he or she has maintained the same principal residence for any five-consecutive year period during the eight years ending on the date of the purchase of a new principal residence. In other words, if someone has lived in his or her house for 10 years and purchases a new home, he or she may qualify for a homebuyer credit. It is not necessary to sell a current principal residence to qualify for this homebuyer credit. For existing homebuyers, the credit is the lesser of \$6,500 or 10 percent of the purchase price of the

new principal residence.

The extended homebuyer credit is now phased out over much higher modified adjusted gross income levels, increasing the number of eligible homebuyers. However, no homebuyer credit can be claimed for a principal residence if the purchase price exceeds \$800,000.

The homebuyer credit reduces a person's tax liability on a dollar-for-dollar basis. Therefore, if the purchaser qualifies for a homebuyer credit but has no tax liability, the purchaser receives the amount of the credit as a tax refund.



In Print and At the Podium/ Deals and Decisions



After three years of negotiating with different potential purchasers, for a sale price of \$900,000, **Mr. Gehlbach** and **Mrs. Vivian** closed on the sale of a seven-tenant commercial building in Chicago . . . **Mrs. Considine** was elected to the board of directors of the United Way of Lee County beginning in January 2010 . . . **Ms. Heeg** continues to represent creditors in bankruptcy cases throughout Illinois, in some cases helping clients to obtain the bankruptcy court's permission to repossess or foreclose secured collateral and in other cases helping clients file claims in order that they can receive a distribution through the bankruptcy system . . . **Mr. Badger** continues to advise various units of government on a number of topics, including the complexities of the Illinois Property Tax Extension Limitation Law . . . **Mr. Gehlbach** and **Mrs. Vivian** recently authored a comprehensive chapter on seller financing of real estate transactions for the Illinois Institute of Continuing Legal Education .

. . . In his most recent commentaries for the web site of the First Amendment Center, www.firstamendmentcenter.org, **Mr. Lee** discussed a decision of the West Virginia Supreme Court of Appeals holding that e-mails between the court's chief justice and the chief executive officer of a company with an appeal pending before the court were not subject to the state's freedom of information act and analyzed the current state of the fair report privilege, which protects publishers that accurately report allegations in lawsuits from claims that the allegations are false . . . **Mr. Badger** continues his work advising clients in estate and trust planning and administration matters, addressing estate taxation, family protection, and family business and family transitions. Of recent interest with the increase over the last few years of the value of farmland, has been the use of §2032A special use valuation for farm property that assists farm family transitions.



Our Holiday Wishes for You



We close this issue of our newsletter – and 2009 – with our sincerest wishes for a healthy and happy holiday season. The year now concluding has not been an easy one from many of our clients and friends. Businesses have failed, jobs have been lost and families have suffered. We much prefer to counsel you in the business, real estate, and estate planning matters that arise in a growing economy, but we appreciate the opportunities to assist you as you fight through these difficult times. Your confi-

dence in us, as always, is humbling.

Whether 2010 will be a better year of course remains to be seen. We hope, however, that you can find some time this holiday season to put aside the hustle and bustle that plagues us the rest of the year and to share quiet, fulfilling moments with family and friends. The court hearings, closings and meetings all will resume soon enough. Before they do, please enjoy the holidays and the optimism the season brings.