Florida TaxWatch

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Presumption of Correctness: The Reality and the Necessity

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Currently pending in the Florida Legislature is House Bill 557 along with its companion in the Senate, Senate Bill 740. The purpose of these identical bills is to alter the standard currently required under what is known as the presumption of correctness for ad valorem tax assessments as applied by the courts of Florida. The presumption is the same presumption that the courts have established for all levels of government throughout the history of our nation. That is, when government acts, it is presumed to have acted correctly and within its authority.

The actual framing of the presumption as it relates to property appraisers (formerly tax assessors) is that if the property appraiser proceeds in accordance with law, i.e., he or she considers those factors established by the Legislature in Section 193.011, Florida Statutes, then his or her values are presumed to be correct unless it is established that there is no reasonable hypothesis to support them.

It is this reasonable hypothesis that seems to be under attack by the major taxpayers. When viewed practically and in actuality, the presumption is not only a threshold that must be overcome in the appropriate case but is necessary to maintain the integrity and stability of the tax rolls, especially for funding of education in Florida.

The property rolls of the state are created each year by revaluation of the properties based upon mass appraisal techniques and standards. The Uniform Standards of Professional Appraisal Practice recognizes and establishes guidelines for this method of valuation. Without mass appraisal, the tax rolls, as they are created with the assistance of computer programs, would never be accomplished. Fee appraisal of every parcel of property in the state of Florida each year would be impossible. Mass appraisal techniques, even before the computer, were utilized when fewer parcels were required to be revalued every year.

The presumption as previously stated merely means that if the property appraiser proceeds lawfully, i.e., that he or she considers each one of the eight factors and that he or she operates within the standards as set forth by the law for consideration of the property, its characteristics and the market, then his or her values are presumed correct. If the property appraiser is shown to have arrived at a value by utilizing one of the recognized approaches to value, the income, market or cost approach, and that any of these approaches would reasonably support the appraisers value within (and I stress within) the reasonable range of values, the value should not be disturbed on appeal.

As noted by the Second District Court of Appeals in *Daniel v. Century Towers, Inc., 462 So.2d 497 (Fla. 2d DCA 1984)*, there are many recognized appraisal technique and theories. Each theory as applied by separate and individual appraisals will give rise to separate and individual opinions. As recognized, if ten fee appraisers did ten appraisals of the same property, they would come up with potentially ten different values. Government has to establish a stability in its tax roll. Therefore, the property appraiser is allowed to establish the value within a reasonable range, and if so, the value cannot currently and should not be susceptible to being overturned because there is a better method or someone, based upon a fee appraisal, thinks that his or her value, though both are correct, is better.

It has been established by the Department of Revenue that in 57% of the recent cases around the state, taxpayers have been successful in obtaining some relief. Therefore, it is obviously not an insurmountable standard. The standard does discourage the frivolous action or the one filed to present an argument or disagreement with the appraisers' value over which one may or may not be the better or more reasonable.

There is a question on this constitutionality of this act in that it may violate a standard established by the Supreme Court. See *District School board of Lee County v. Askew, 278 So.2d 272 (Fla. 1973)*. The courts of this state have mandated that there is no alternative for "just value," that anything less than that cannot be recognized or tolerated in the tax roll. *State Dept. of Revenue v. Markham, 426 So.2d 555 (Fla. 4th DCA 1982)*. Therefore, someone has to establish that standard, and the courts, historically, have been reluctant to be the party doing the assessments. Therefore, they have the standard of the property appraiser and that his lawful obligations, when met, produce a value that should be adhered to.

Should this legislation become law, the courts will then be, we believe, subjected to a substantial increase in litigation filed by those now discouraged from filing because of the presumption.

With the standard lowered, more challenges will be filed based upon a professional fee appraisal and an appraiser who is willing to testify to a value lower than the assessors. They will attempt to demonstrate a site specific fee approach is better than a mass appraisal approach and with a greater likelihood of accuracy. If four to five times more than the current litigation is filed and a substantial number or percentage of those are successful, there is the potential for greater loss in value from the tax roll.

The small homeowner or small business owner is still not going to find sufficient funds to challenge the presumption. Therefore, this legislation, though touted as such, is not going to be of great benefit to the smaller taxpayer, but only to the major property owner with sufficient funds to litigate the matter and hire the necessary experts.

This results in loss of tax dollars since the decisions of both the VAB and courts are with few exceptions rendered beyond the time to recalculate the millage. In addition, property appraisers are going to be reluctant to seek the necessary funds in their budget to fight all this extensive litigation, thereby agreeing to reduce values when they are informally presented or there is a threat of litigation.

There is also the great potential for the inequities created in the various tax rolls. When a taxpayer in a classification is successful in reduction, it raises the issue about all others that have been assessed on the mass appraisal basis which are like it. Does the property appraiser, because of the decision of either the value adjustment board or the court, then go in and reduce every other property that has been assessed on these same bases, further potentially eroding the tax base? If the appraiser does not, there are inherent equities in the tax roll and the tax burden has shifted away from those major taxpayers that are willing to go in and spend the money in court.

It should be remembered that the standard does not eliminate errors or mistakes or unjust assessment. By law, the court will not be determining that the appraiser assessment is wrong or unlawful, but now the standard will be which is the better of the values.

There is now no real problem in the tax rolls of this state. Proof of this is the analysis done by the Department of Revenue of all 67 counties every year in their review of the tax rolls. (In every other year they perform an in depth audit of the rolls.) The Department of Revenue is not battling to get the appraisers to reduce their values because they are too high but because they are constantly diligent in attempting to keep the rolls high enough to meet their standard of just valuation.

In closing, it is obvious that this is a measure by a few major taxpayers to buy relief through the Legislature when the courts have determined that they did not make an adequate showing to indicate that they are not "reasonably" assessed currently on the tax rolls. This state should not take the chance to see what the ramifications of altering the standard should be because there has been demonstrated no compelling reason. The proponents of the bill have never come forward and established any inequity which they talk about, i.e., situations where properties have been over assessed and later sold for substantially less, proving that the values were over assessed or wrong.

** A companion to this article entitled, "The Property Tax Burden of Proof: A Call for Change," by Attorney Robert S. Goldman, is being published concurrently.*

About the Author

John C. Dent, Jr. practices law in Sarasota, Florida with the firm of Dent and Cook, P.A. He received his law degree from the University of Florida (B.S.B.A. 1964; J.D., 1966). Mr. Dent has practiced in the area of ad valorem taxation for well over twenty years. In 1983-84, he served as chairman of the Tax Advisory Committee of the Florida House of Representatives. He served on the Taxation and Budget Reform Commission from 1989 to 1990.

He has presented papers on such topics as Environmental Regulation and Their Impact on Ad Valorem Taxation, Valuation of Utilities and Related Industries, and Assessment for Ad Valorem Tax Purposes on Television Cable Properties before the International Association of Assessing Officers. He has also lectured for the Florida Bar and the Florida Department of Revenue in the area of ad valorem tax law. Mr. Dent has tried numerous ad valorem cases and subsequent appeals covering properties such as resort hotels, cable television systems, shopping centers, power plants, a circus, banks and residential homes.

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