New Jersey Assessors Bulletin

MEMBER
International Association
of Assessing Officers

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PRESIDENT'S MESSAGE

Our 35th conference for Assessors and staff was from all indications a success. I want to thank

everyone who contributed to our program, from the opening of our session by Feather O'Connor, Treasurer of the State of New Jersey, to its closing by Father Guido, Tax Consultant to the Pope whom we know better as Mike Miano, our friend from Connecticut. Thanks go to Henry Coleman, Executive Director of the State and Local Expenditure and Revenue Policy Commission, John Baldwin, Director of the New Jersey Division of Taxation, and the Honorable Gerald Stockman, Senator from Mercer County, for sharing their views concerning the various commission studies and proposed legislation. Earl Ewes, Dave Taylor, Jack Meeker, and Saul Wolfe did a great job on equalization.

During the Conference several points offering changes in the Assessment function were suggested by several members of our Association. Some are listed below for your perusal.

(1) Local Property Branch should become a separate Division.

(2) Municipal Assessors should be accountable to the County Tax Board Commissioners in the performance of their duties.

(3) County Tax Boards should have the authority to order a municipality to adequately staff an Assessors office including the appropriation of the necessary tools needed to professionally run the office.

(4) County Tax Boards should review all applicants for Assessors' positions within their counties.

(5) State dedicated funding to assist Assessors' offices should come from a percentage of the Realty Transfer Fee.

(6) Tax Appeal date of August 15th should be changed to March 15th with all hearings completed by May 15th. Reasoning is that appeals should be based on assessments not on taxes.

(7) Requirements for a CAMA Software program should be established by the Division of Local Property Assessments to be used by all Assessors.

(8) Exempt properties should pay municipal share of taxes.

(9) Recertification for all holders of the CTA based on a point system as do other appraisal organizations.

(10) User fees for information obtained from CAMA system to be dedicated to Assessors office for upgrading equipment.

The views above and many more will be discussed at the August 18th meeting of the AMANJ Executive Board. During this meeting I will ask all Tri-County Vice Presidents to hold meetings within their tri-counties so that members of the Property Tax Study Committee including myself may attend and present to our membership the changes we feel are necessary to improve the office of the Assessor and the Local Property Tax System. We hope each Tri-County Association will offer their views and recommendations to be incorporated into a report

(continued on next page)

(President's Message Cont'd)

to be presented to Director Baldwin and our Legislators.

In closing I want to thank Jack Raney, Superintendent of Local Property, and Al Bills, Assistant Superintendent for their cooperation and perseverance in helping to make this year's Rutgers Conference an unforgetable one.

See you in November.

Robert W. Pastor, AMANJ President

ASSEMBLY, NO. 2587

An Act concerning the taxation of certain watershed property and supplementing Title 54 of the Revised Statutes.

Be It Enacted *by the Senate and General Assembly of the State of New Jersey*:

1. Notwithstanding the provisions of any law, rule or regulation to the contrary, whenever any real property devoted to watershed use, and owned by a private water company under the jurisdiction of the Board of Public Utilities pursuant to Title 48 of the Revised Statutes, is devoted to another use, other than a tax-exempt use, the property shall be subject to additional taxes, hereinafter referred to as roll-back taxes, in an amount equal to the difference, if any, between the taxes paid or payable on the basis of valuation and the assessment as watershed property and the taxes that would have been paid or payable had the land been valued, assessed and taxed as other land in the taxing district, in the current tax year (the year of change in use) and in each of the two tax years immediately preceding in which the land was valued, assessed and taxed as herein provided.

In determining the amounts of the roll-back taxes chargeable on land which had undergone a change in use, the assessor of the appropriate taxing district shall for each of the roll-back years involved, ascertain:

(a) The full and fair value of such land under the valuation standard applicable to other land in the taxing district;

(b) The amount of the land assessment for the particular tax year by multiplying such full and fair value by the county percentage level, as determined by the county board of taxation in accordance with section 3 of P.L. 1960, chapter 51 (C.54:5-2.27);

(c) The amount of the additional assessment on the land for the particular tax year by deducting the amount of the actual assessment on the land for that year from the amount of the land assessment determined under (b) hereof; and

(d) The amount of the roll-back tax for that tax year by multiplying the amount of the additional assessment determined under (c) hereof by the general property tax rate of the taxing district applicable for that tax year.

2. The assessment, collection, apportionment and payment over of the roll-back taxes imposed by section 1 of this act, the attachment of the lien for such taxes, and the right of a taxing district, owner or other interested party to review any judgment of the county board of taxation affecting such roll-back taxes, shall be governed by the procedures provided for the assessment and taxation of omitted property under the provisions of P.L. 1947, c. 413 (C. 54:4-63.12 et seq.). Such procedures shall apply to each tax year for which roll-back taxes may be imposed, notwithstandingf the limitation prescribed in section 1 of P.L. 1947, c. 413 (C. 54:4-63.12) respecting the periods for which omitted property assessments may be imposed.

3. This act shall take effect immediately, and shall apply to changes in use occurring on and after the effective date of this act.

STATEMENT

This bill provides for roll-back taxes on watershed property owned by a private water company is devoted to another use. Essentially, the roll-back taxes would be calculated and collected in the same manner as roll-back taxes under the State farmland assessment program.

LEGISLATIVE COMMITTEE REPORT

Our involvement with the Legislative Committee over the past few months has given us a greater appreciation of the time and effort George Harraka put into the chairmanship while he was with us.

Just keeping up with the avalanche of bills that keeps pouring out of Trenton is a chore in itself. Last week's Legislative Index listed 2700 Senate and 3386 Assembly bills, not counting various Resolutions in both houses.

Of course, all the bills do not concern us or property tax related issues. As of last week we noted 105 which may relate to property tax items.

I do not want to list everything, for most are not critical at this point in time. However, we do need to pay attention to a few bills that could move before we meet again in November.

S-1952, Senator Stockman's bill, is generally based on the recommendations of the Property Tax Assessment Study Commission. Since the revaluation aspects of the bill favor urban communities there is an effort on the part of the urban interests to move this bill. S-1952 also would establish a separate Division of Local Property Tax Assessment and an Assessment Administration Review Board.

A-152 is a bill to amend the correction of errors statute and expand the scope of the statute to include computational or descriptive errors. This bill passed the Assembly 75-0 about a week after George passed away and is a problem we need to deal with in the Senate.

A-300 started out as something we were not worried about. Sponsored by Assemblyman Kamin, its intent is to overturn the "tank" bill. Unfortunately, business interests have rallied behind this bill and over 30 co-sponsors have been added. The League of Municipalities is involved in fighting this bill along with other interested parties.

These are the major items that relate to us at the moment. Other bills cover increasing the amounts of the various deductions, funding for CAMA programs at the state level, reval issues and "tax relief."

We do not expect any action on our major concerns soon due to the legislative priority being given to the auto insurance problem and some major retirement issues. We will keep in touch with the items that concern our Association and remain prepared to act.

One thing we are planning to consider over the summer is subscribing to the Government New Network. Located in Trenton, this service provides computer access to bill status reports, committee agendas, board lists and many other items relating to the legislative process. Our first impression is that this would be a valuable tool in keeping up-to-the-minute. Since Walt Kosul and I both have terminal capability in our offices the only costs involved would be the monthly subscription fee plus online time. We plan to attend a demonstration of the service as a committee shortly.

Bill Birchall, Jr., Co-Chairman

Joyce Jones, sitting in as proxy for Sam Bafarah at NRAAO Executive Board meeting in Bretton Woods.

LOCAL PROPERTY TAX—Preferential Farmland Assessment Eligibility Did Not Require Single Legal Ownership in One Taxing District Because the Farmland Assessment Act Focuses on Use, Not Ownership of Land, to Promote Open Countryside and Agricultural Products—Three separate lots were conveyed to plaintiffs Jane Senoff and Minda Shein by their parents. The third lot, however, was conveyed erroneously to Esham Corporation, an inactive entity, and alter ego of the plaintiffs. Because of the Farmland Assessment Act, *N.J.S.A.* 54:7-23.1 et seq. which requires at least five acres of land to qualify for the assessment, and also the Handbook for New Jersey Assessors (1980 ed.) which stated that the five acres must be under one ownership, the tax assessor would not aggregate the 6.1 acres that comprise the three lots, thereby disqualifying the land from the preferential tax assessment.

The Tax Court determined that, in keeping with the legislative intent behind the Act, use not ownership was the essential ingredient for eligibility under the Act, in the interest of preserving New Jersey's open spaces and farmlands and to encourage agricultural products. The court also held that separate legal ownership did not defeat eligibility under the Act as long as the separately owned lots formed one "economic and functional unit." The Court noted that the single owner provision in the Tax Assessor's Handbook merely expressed an interpretation by the Division of Taxation and was subject to judicial authority.

Shein and Senoff v. North Brunswick—Tax Court 1 (1986).

The family of a recently deceased multi-millionaire had gathered for the reading of his will. Of his $10 million estate, he left $5 million to his wife and $1 million a piece to his five children.

"And to my brother," the will concluded, "who has always insisted that health is more important than wealth, I leave my sun lamp."

TAX ASSESSOR JAILED

On March 25th, Dover Township Police arrested Tax Assessor Lawrence Henbest in his office at town hall.

A reliable source reports that Mr. Henbest, alias Lightnin' Larry, was charged with impersonating a public official. He was also charged with attempting to escape from the police. Ol' Lightnin' claimed he was just getting his coat so he could go with the officers (a likely story), but they collared him and took him off to the Ocean County Mall where the Third Annual American Cancer Society Jail-A-Thon took place.

Larry says he used every means he had to raise the $800 bail (wonder what he meant by that); however, had he stopped hanging up on the people who wanted to donate to keep him in jail, he might still be in jail.

But raise the money he did, and was sent home after promising to be a good, law-abiding citizen from now on.

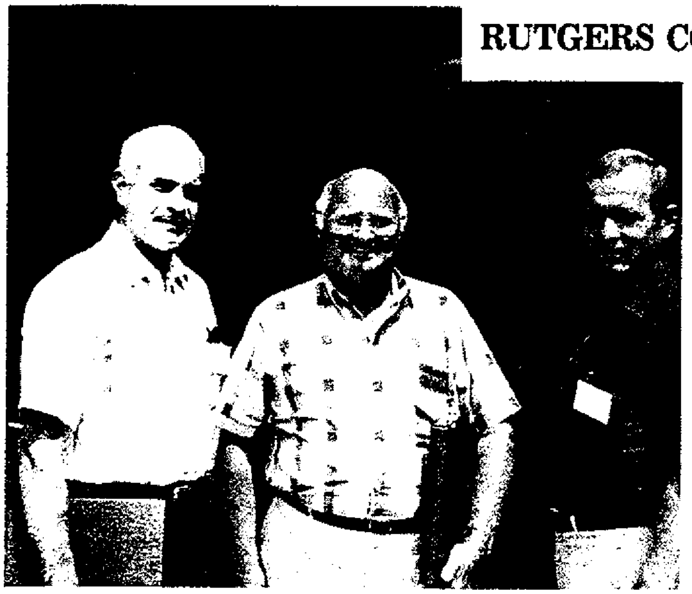
A good time was had by all and $66,000 raised for The Cancer Society.

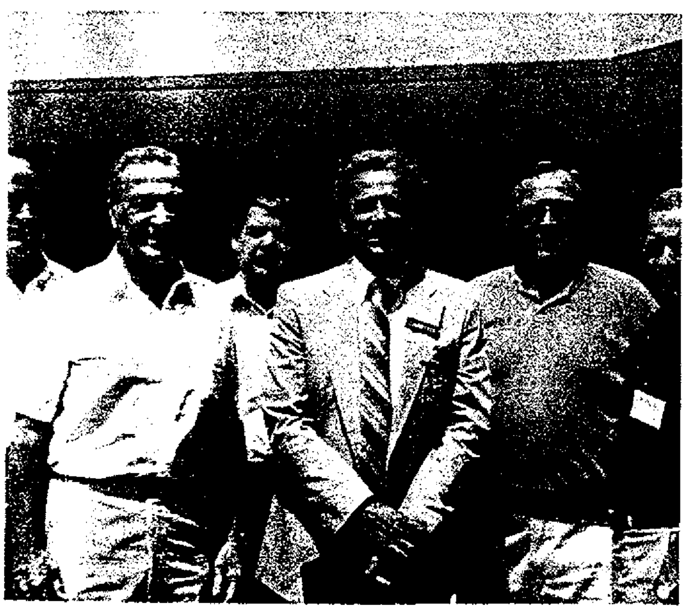
How come the only two cars going under the speed limit anywhere on the interstate are doing it side-by-side ahead of you?

ASSESSOR WANTED

TAX ASSESSOR—Borough of Hopatcong, Sussex County. Full Time position. CTA REQUIRED. Seeking a qualified individual to manage office staff of 2 full time clerks. Salary commensurate with ability and experience. Applicants should submit complete resume to Robert Badini, Administrator, Borough of Hopatcong, River Styx Road, Hopatcong, N.J. 07843.

RUTGERS CONFERENCE





RUTGERS CONFERENCE

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NRAAO CONFERENCE

LANDMARK DECISION AFFECTING RIGHTS OF ASSESSORS

In a case in which the State Association and William Reeser, Assessor of Mullica Township, were plaintiffs, the Superior Court in a published decision awarded relief which substantially strengthens the insulation from outside interference essential to the assessor's discharge of his statutory duties.

The issue before the court was the right of a tax assessor to an increase in salary given to all other municipal officers and employees pursuant to *N.J.S.A.* 40A:9-165. While Reeser was given a salary increase in 1986 of 4%, other employees in Mullica Township received increases ranging from 10% to a high of 48%.

Of particular significance was proof that Reeser's smaller increase in salary was a direct result of his refusal to provide the mayor with weekly reports describing his assessing activities. When Reeser received this request he reported it to the County Tax Administrator who instructed him not to comply. In his judgment, the assessor was subordinate to the county board of taxation and the Director of the Division of Taxation and was not accountable to the mayor in performing his assessing duties.

The Township argued that by giving a 4% increase to Reeser, they had compiled with the mandate of the statute. This is so, they contended, because the statute merely requires payment of a salary increase to an assessor when other employees receive an increase, but is silent as to the amount thereof.

In rejecting this argument, the Court held that the purpose of *N.J.S.A.* 40A:9-165 is to enhance the assessor's independence:

> The amendment does not permit only a token increase in salary for an assessor when compared to the increases given to other municipal employees. The purpose of the statute would be frustrated unless an assessor was given an increase commensurate with increases given to other municipal employees, in the absence of good cause to the contrary.

Judge Rimm recognized the "obvious and overwhelming need of the assessor to be free from municipal interference" and noted that:

> Municipalities have a limited role with respect to assessors so that assessors can carry out their responsibilities free from political pressure and secure in the knowledge that, if they perform their responsibilities as assessors honestly and completely, they need not fear reprisals nor retaliation from municipal officials.

Moreover, he condemned the use of a salary ordinance to control an assessor:

> The municipality retaliated against the assessor by giving him a smaller increase than that given to other employees because he refused to file reports with the mayor.

In its ultimate ruling, the court concluded that *N.J.S.A.* 40A:9-165 requires an assessor to receive a salary increase "commensurate" with increases given other employees—unless there is good cause shown by a municipality why the assessor should not receive such an increase. Although the issue of what constitutes good cause was not before it, the court gave the following examples: a new assessor may be hired at a substantially higher salary than his predecessor; an assessor may receive a substantial increase in salary in one year because of an increase in his hours of work; his status may change from part time to full time assessor; or, he may have increased assessing responsibilities due to extensive development in the community. When an assessor receives a substantial salary increase for reasons such as these, it may constitute good cause to deny him an increase in the following year commensurate with that given other municipal employees.

Lastly, while the court ruled that Reeser properly refused to provide reports to the mayor which impinge on his assessing activities, it nonetheless allowed the municipality to request the assessor to provide assistance in the budget process as it affects the assessor's office and to report on personnel, equipment or space needs.

This opinion represents a milestone in our case law because it reflects a heightened sensitivity on the part of our courts to the importance of insulating the assessor from outside interference. This may, in part, be attributable to the fact that the case was heard before a Tax Court judge temporarily assigned to the Superior Court who, because of his background and expertise, is more keenly aware of the critical need for autonomy on the part of an assessor in the performance of his statutory duties.

Edward Rosenblum

Management offered a $200 cash bonus to employees who suggested ways to save the company money. The first award went to a man who suggested lowering the bonus to $100.

He who receives a benefit should never forget it; he who bestows should never remember it.

Association of Municipal Assessors of New Jersey
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Quarterly Publication

LOCAL PROPERTY TAX—Propert Owner's Appeal to the Tax Court Deprived County Tax Board of Jurisdiction Over Appeal of Assessment, and Subsequent Appeal to County Tax Board, While Tax Court Appeal was Pending, Resulted in a Judgment which was a Nullity—Taxpayer appealed a 1985 assessment and sought to apply the "Freeze Act," based on a judgment in a 1983 appeal to the County Tax Board. The record revealed that taxpayer had appealed the 1983 assessment directly to the Tax Court. Before that appeal was heard, taxpayer filed an appeal to the County Tax Board, and a consent judgment fixed the assessment at $2,700,000. The 1983 Tax Court appeal was subsequently withdrawn. Taxpayer sought to use this assessment of $2,700,000 as the required value for 1985, employing *N.J.S.A.* 54:3-26, the "Freeze Act," in his argument.

The Tax Court held that the 1983 Tax Court appeal deprived the County Tax Board of jurisdiction under *N.J.S.A.* 54:32B-21 and 2A:3A-3. The purported subsequent appeal to the County Tax Board was a nullity, and so was the purported judgment.

The complaint, requesting deductions of the assessment for 1985 from $3,700,000 to $2,700,000 under the Freeze Act, is dismissed.

Union City Assoc. v. Union City—8 N.J. Tax 583 (Tax Ct. 1986).

LOCAL PROPERTY TAX—Tax Court Can Determine Value of Realty Based on All the Evidence, and Need Not Accept Either Party's Valuation. Valuation as a Single Use Industrial Complex was Accepted—Taxpayer appealed the real property assessment, claiming that the highest and best use was as multi-tenanted facilities. Property is an industrial complex of 14 acres and 11 buildings, of approximately 1,000,000 square feet. Tax Court held that it was a "limited purpose" property, with its highest and best use being a single-purpose industrial complex. It has been so used as a lamp manufacturing facility from 1916 to the assessment year, 1982. The Tax Court found that the gross rental value, based on local comparables, gave the most accurate valuation. The municipality's comparables were most realistic, and the Court found that the assessment was within the 15% assessment protection range of C. 123, L.1973.

The Appellate Division reviewed the Tax Court decision in 9 N.J. Tax 92, and affirmed per curiam.

SENATE, NO. 2129

An Act concerning exemption from taxation of newly constructed single-family dwellings and improvements to single-family dwellings under certain circumstances, amending and supplementing P.L. 1975, c. 105 (C. 54:4-3.72 et seq.).

STATEMENT

This bill would authorize municipalities in which urban enterprise zones have been designated to grant tax exemption, on the pattern of the exemptions currently available for urban redevelopment projects under the "Fox-Lance" law, for home improvements and newly constructed single-family dwellings.

Similar exemptions, though less in amount, shorter in duration and for improvements only and not for new construction, are already available, under the act which this bill would amend and supplement (P.L. 1975, c. 104), in any municipality where residental neighborhoods have been declared "in need of rehabilitation." If, in addition to such a declaration, the municipality has also been designated for an enterprise zone, this bill would permit total exemption of newly constructed owner-occupied single-family dwellings, and of the value of home improvements, for a period of up to 7 years.

The exemption would be partially offset by a "service charge" in lieu of taxes amounting to 2% of the initial value of the structure or improvement.

The granting of these exemptions would be optional for any muncipality authorized by the legislation to grant them, and would require the adoption of a local ordinance.

No man is a failure who enjoys life.

LOCAL PROPERTY TAX—Reassessment of Four Apartment Complexes to Reflect Vacancy Decontrol is Not Discriminatory Spot Assessing—Taxpayers appealed reassessments of their properties, made within one to three years after district-wide reassessments of the municipalities. They claimed that these were spot assessments. The tax court affirmed the reassessments, and taxpayers appealed.

The Appellate Division affirmed the reassessments. They were not made at random, but were limited to certain classes of properties which might have been underassessed. In one case the class was industrial and commercial property, and the review was based on changes in income capitalization and depreciation schedules. In the other case, the class was all apartment complexes, based on an amendment to rent control, permitting re-rental or vacated apartments at full market value.

The Court held that there was good reason for the reassessment, and it treated all property of a class in the same way. This avoided "spot reassessment," in which some properties are reassessed, and others of like kind are not even reviewed.

Taxpayers obtained no relief under chapter 123, since there was no showing that the assessments exceeded 15% above the average district ratio. The assessors had followed their statutory duty to correct inequities in assessments. The assessments were affirmed.

ASSEMBLY, NO. 2397

The Assembly Housing Committee reports Assembly Bill No. 2397 favorably, without amendment.

This bill permits a municipality to pass an ordinance authorizing its municipal tax assessor to take into consideration the value of municipal garbage collection services that are not being provided to a condominium association, when establishing the taxable value of a condominium unit. At present, the owners of certain condominium units located on private streets are taxed for certain municipal services that are not received and for which the condominium association privately contracts. This results in double payment for certain services such as garbage and trash collection. By paying to remove the garbage and trash on their own streets, the condominium owners benefit the health and public safety of the entire community.

An ordinance authorized by this bill would allow the municipal assessor to reduce a condominium unit's assessment by a percentage called the "garbage costs reduction factor." This factor would be the percentage of total municipal-purpose expenditures in the pre-tax year which was attributable to garbage collection and disposal costs.

Feather O'Connor, Ray Bodnar, Bob Pastor at 35th Conference.

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