

Navigating Revenue Issues and Fund Balances During COVID

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Navigating Revenue Issues and Fund Balances During COVID

Webinar Presented by Scott L. Ginsburg and Jessica L. Knox

September 25, 2020

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2020 Property Taxes

- More Assessment Appeals
- Possible Delays & Distributions
- Possible Assessor Reassessments
- COVID / Catastrophic Event Adjustment



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Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.

Possible Delays & Distributions

Who hasn't paid their property taxes? Some big names.

Willis Tower, Water Tower Place and some large suburban shopping malls have yet to pay the bill.

GREG HINZ ON POLITICS



- Willis Tower
- Water Tower Place
- Citigroup Center
- Water Tower Place
- Northbrook Court
- Westfield Old Orchard
- Woodfield Shopping Mall

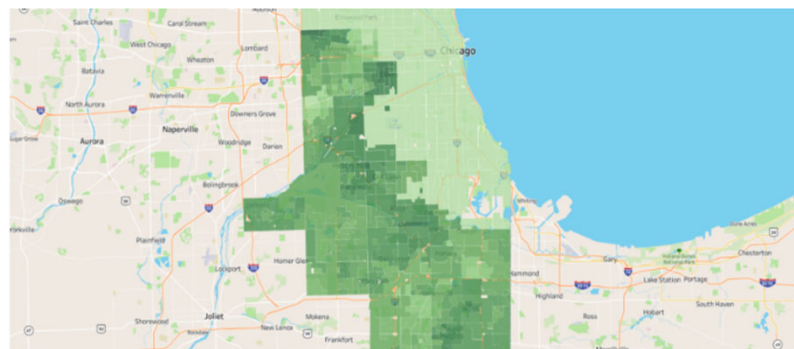
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Possible Assessor Reassessments

Anticipating an avalanche of COVID-19 appeals, assessor begins reducing values

by Meg White May 28, 2020



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COVID / Catastrophic Event Adjustment

- Reassessment in Disaster Areas – 35 ILCS 200/13-5
 - Area declared a major disaster area by President or Governor of IL
 - Upon application by property owner, reassess taxable property which was substantially damaged by the disaster
 - Value determined as of the date of declaration of the county as a major disaster area

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Real Estate Market During Covid-19

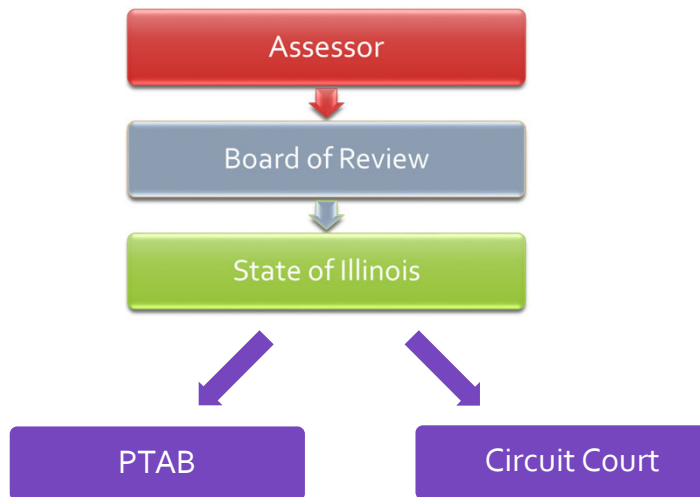
Anticipated Impact on Real Estate

- Residential – relatively the same
- Retail – downward trend / increase in vacancy
- Office – downward trend / change in use
- Industrial – upward trend

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Property Tax Assessment Appeals



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Defending a Property Tax Assessment Appeal

- Illinois School Districts have the right to intervene and participate at the county Board of Review and the PTAB
- Board of Review Reductions
 - Reduced taxes are spread out amongst tax base.
 - EAV reductions do not result in school district refunds.
- PTAB and Circuit Court Reductions
 - All reductions result in refunds plus interest.

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Top Reasons for Board of Review Participation

Top Reasons for Board of Review Participation

- No refund
- Shorter timeframe means less litigation costs
- Opportunity for intergovernmental cooperation
- Opportunity to work with local property owners
- Local disputes decided locally
- Multi-year settlements
- Flexibility
- Get to the reasonable value



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Overview of School District Funds

“Each school board shall establish and maintain the number and types of funds necessitated by the nature and scope of its operations.”

23 Ill. Admin Code 100.30(b).

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Interfund Transfers 105 ILCS 5/17-2A

- Published Notice
 - At least 7 days prior to hearing but not more than 30 days prior to hearing
 - Newspaper of general circulation in the District
 - Setting forth time, date, place and subject matter of hearing
- Posted Notice
 - At least 48 hours prior to hearing
 - School District office or building where hearing is to be held
 - Setting forth time, date, place and subject matter of hearing
- Public Hearing
- Resolution

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Interfund Transfers 105 ILCS 5/17-2A

- Permissible Transfers Under 17-2A
 - Educational to Operations and Maintenance (O&M")
 - Educational to Transportation
 - O&M to Educational
 - O&M to Transportation
 - Transportation to Educational
 - Transportation to O&M
 - Tort to O&M
- Sunset – After June 30, 2021 transfer must be to meet one-time, non-recurring expense.



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Transfers to Capital Projects Fund?

ISBE Rule 100.10

- Capital Projects Fund –
- This fund or fund group is required to account for proceeds resulting from each bond issue, receipts from other long term financing agreements (including impact fee agreements), receipts from School Facilities Occupation Tax proceeds, or construction or maintenance grants used to finance a capital project, capital lease, lease purchase agreement, or if a tax is levied in accordance with Section 17-2.3 of the School Code.
- A separate fund shall be established for each project or financing source, but aggregated for reporting purposes.

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Transfers to Capital Projects Fund?

ISBE Rule 100.10

- Transfers to Capital Projects Fund:
 - "When revenues or other sources of funds are pledge to pay for a capital project or acquisition, the moneys shall be transferred into the Capital Projects Fund."
 - "All other inter-fund transfers shall be accomplished in accordance with the applicable provision of Section 17-2A of the School Code."
- ISBE Audit Form Account Number 8840 – "Fund balance transfer to pay for Capital Projects."
- Statutory authority for ISBE Rule 100.10 is unclear
- ***Safe approach is to transfer to O&M under 17-2A***

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Working Cash
Fund
Abatement
105 ILCS 5/20-10

- Resolution
- Fund or Funds Most In Need of Money
- Must maintain credit to the Working Cash Fund of at least .05% of District EAV



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Working Cash
Fund
Abatement
105 ILCS 5/20-10

- *1001 Ogden Ave. Partners v. Henry, 2017 IL App (2d) 160838*
- Appellate Court: An Illinois School District may issue working cash fund bonds for express purpose of abating to O&M for capital projects.
- Article 20 expressly permits transfer for "any corporate purpose," including the maintenance, improvement, alteration and repair of existing school buildings.
- Article 19 building bond referendum requirements not applicable to working cash fun bonds issued under Article 20.

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Common fund-related objections to School District levies:

Excessive Accumulations

- Excessive accumulation objections
 - Typically assert that the challenged levy resulted in an excess accumulation of assets in the levied-for fund because, at the time the levy was made, the fund's available assets exceeded two times its average annual expenditure.
 - Excess accumulation claims are analyzed according to the guidelines set out in *Central Illinois Public Service Co. v. Miller*, 42 Ill.2d 542, 248 N.E.2d 89 (1969) ("CIPS v. Miller").
 - If available assets of that magnitude are shown, the taxing body can defeat the objection by presenting credible evidence as to why it needed to make an additional levy.

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Common fund-related objections to School District levies:

Improper Expenditures of "Tort" funds

- Allege that school district financial records show that it made "improper expenditures" from proceeds of levies for tort/liability insurance purposes, and that the tort levy should be reduced by the amount by which the fund would be replenished if reimbursed for the alleged wrongful "diversions of assets".
- To support plaintiffs' allegations, the text of these objections often cite budget line items for unemployment compensation and workers compensation.



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Lawful Use of Tort Fund Revenue and Risk Management Programs

- Section 9-107(b) of the Tort Immunity Act – Pursuant to, monies in the Liability, Protection, and Settlement Fund may be used to pay:
 - “the cost of insurance, individual or joint self-insurance (including reserves thereon), including all operating and administrative costs and expenses directly associated therewith, claims services and risk management directly attributable to loss prevention and loss reduction, legal services directly attributable to the insurance, self-insurance, or joint self-insurance program, and educational, inspectional, and supervisory services directly relating to loss prevention and loss reduction ... including all costs and reserves directly attributable to being a member of an insurance pool ...”;
 - principal and interest on bonds issued to create insurance reserve or self-insure;
 - judgments and settlements arising from tort liability; and
 - “the cost of risk management programs.”

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Common fund-related objections to School District levies:

Loss in Collection

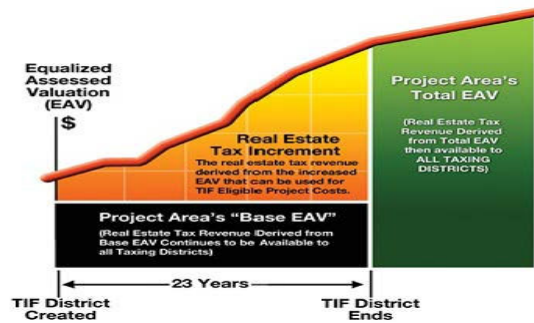
- Allege that County Clerk improperly added % for anticipated loss in collection when historical collection rate did not justify the additional tax.
- School Districts should evaluate potential collection loss in light of current events.

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Illinois Tax Increment Financing ("TIF") Overview

- 23 Years
- EAV for School District taxes freezes.
- Additional revenue, "incremental value," is funneled to the Village/TIF



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The Basics

- Purpose
 - The purpose of a tax increment financing (TIF) district is to generate funds so that a municipality may expend funds to redevelop a "depressed" area.
 - Real estate tax revenues generated within the TIF district are diverted from other taxing bodies, such as schools, to pay for the cost of the redevelopment.

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Challenges

- Failure to meet the technical requirements of the statute regarding notice, hearing, and adoption of the TIF.
- Insubstantial findings by the municipality of the existence of a blighted, conservation, or industrial park area.
- Private development of the area has occurred or will occur without the TIF designation.
- All of the property in the TIF is not substantially benefitted by the plan.
- Political ramifications of being labeled as anti-development.

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Questions?



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Scott focuses his practice in the area of real property taxation and assessment appeals, where he has tried several cases before the State of Illinois Property Tax Appeal Board, and he litigates cases in the circuit court on valuation and tax rate objections.

Scott also practices in the area of commercial transactions and local government, including contract drafting and review, litigation and alternative dispute resolution. He has experience in representing general contractors, local governments and business owners in all aspects of civil litigation.

Prior to joining Robbins Schwartz, Scott concentrated his practice on litigation, in the areas of commercial disputes, construction defects and labor and employment issues. Scott is also a former judicial extern to the Honorable Michael J. Reagan, United States District Judge, Southern District of Illinois.

RECENT PUBLICATIONS

Author, "*PTAB Clarifies Uniformity Standards for Income Properties*," Illinois State Bar Association's *Tax Trends* (2015)

Author, "*Chicago Bears Football Club v. The Cook County Department of Revenue*, 2014 IL App (1st) 122892," *Tax Trends*, Illinois State Bar Association (2014)

Contributing author, "Illinois Supreme Court Clarifies Standard Review for Zoning Decisions," *Illinois Municipal Review* (2008)

RECENT PRESENTATIONS

Property Tax Assessment Challenges and How to Defend Your Tax Base, PMA Financial Network, LLC (June 2020)



PRACTICE AREAS

Commercial Law
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Real Estate Development
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Jessica practices in the firm's commercial, construction, real estate, public finance, and taxation practice groups. Jessica represents clients such as townships, school districts, community colleges, and private entities in real property taxation and assessment appeals. She also represents clients in the areas of commercial transactions and construction law, including drafting and negotiating contracts, litigation, and alternative dispute resolution.

Prior to joining Robbins Schwartz, Jessica's practice involved representing clients on commercial and residential real estate transactions, leases, employment contracts, and residential tax appeals. Jessica also previously represented lenders in residential foreclosures in both Washington State and Illinois.

RECENT PUBLICATIONS

Contributing author, "Public Body Social Media Rules Make Retention, Ready Retrieval Imperative," *Chicago Daily Law Bulletin* (2019)

Contributing author, "How Far Does the Law Allow Schools to Go?" *UPDATE Magazine*, Illinois ASBO (2018)

RECENT PRESENTATIONS

Property Tax Assessment Challenges and How to Defend Your Tax Base, PMA Financial Network, LLC (June 2020)

Construction Law 101, NBI (December 2019)



PRACTICE AREAS

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