

Thirty Years of Judicial Education on Property Tax Issues

Joseph C. Small and Joan Youngman

When a handful of judges and tax experts met around a table at the Lincoln Institute's original Moley House headquarters in January 1980, they could hardly have foreseen that their one-day seminar would initiate the major educational program for the nation's state tax judges. Over the past 30 years, the Lincoln Institute has sponsored the annual National Conference of State Tax Judges as a means of improving land-related tax policy as applied and interpreted by adjudication in tax courts and tax appeal tribunals.

Participants in the conference include members of administrative and judicial tax tribunals who hear appeals of tax assessments, denials of refund requests, or other property tax disputes on a jurisdiction-wide basis in all 50 states, the District of Columbia, and the cities of Chicago (Cook County) and New York.

Tax Tribunals and Effective Tax Policy

Taxation is a highly complex and emotionally charged reality in countries throughout the world. Patrick Doherty, the past president of the United Kingdom's Institute of Revenues, Rating, and Valuation, has observed that to be acceptable, it is not sufficient or sometimes even necessary for a tax to meet an abstract standard of fairness. The essential element is that the levy "feel fair" to the taxpayer. An open, accessible, timely, and unbiased forum for appeals is crucial to this sense of fairness.

Tax tribunals play a vital role in affording aggrieved taxpayers a fair opportunity for consideration of their claims. Legislation and regulation enunciate policy at general and sometimes abstract levels. The actual application of the law to specific factual situations

and disputes effectuates that policy. Tax tribunal interpretations can carry the force of law and precedent. Judicial education is an investment in sound tax policy that, by reaching a targeted and highly influential audience, can reap public benefits long into the future.

Although consideration of appeals is central to any tax system, the special nature of the property tax increases the importance of access to a fair and equitable tribunal. Unlike income taxes withheld from one's salary or sales taxes collected as part of numerous transactions and never totaled for the taxpayer, property taxes generally require significant and highly visible periodic payments. Furthermore, the intricacies of the income tax leave most taxpayers without any intuitive sense of potential errors in its calculation. The property tax, on the other hand, is usually based on fair market value, a dollar figure that a homeowner may be able to estimate with some precision.

The property tax is primarily a local tax that engenders a greater sense of personal involvement than levies that support more distant levels of government. Not incidentally, the property tax is also the primary focus of much taxpayer discontent. It is easier to mobilize opposition to a visible local taxing body than to state or federal revenue departments. State legislators are also far more receptive to pressure to constrain local revenues than to efforts to reduce their own budgets.

At the same time, property tax disputes may involve large business enterprises owning complex structures whose valuation may raise highly theoretical or technical questions. Courts may need to determine the value of manufacturing plants that can constitute the major portion of a locality's tax base, or of property that is part of a going concern whose sale price represents intangibles such as business good will.



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Recent recipients of the Judge of the Year award gathered at the 2009 National Conference of State Tax Judges in Louisville, Kentucky. Left to right, seated: Peter Loesch and Kelsie Jones, Kentucky. Standing: Glenn Newman, New York City; George Perez, Minnesota; Thomas Fisher, Indiana; Jill Tanner, Oregon; Albert Shamash, New Hampshire; Arnold Aronson, Connecticut; Steven Gombinski, New York City; Thomas Jaconetty, Cook County, Illinois; and Joseph Small, New Jersey.

The Special Challenges of Judicial Education

The importance of judicial education is matched by the challenge of presenting ongoing, impartial, and up to date instruction, especially with regard to specialized subject matter. Judges grappling with complex factual and legal issues often face a lonely task, and specialized tribunals such as tax courts can be particularly isolated. Some state tax courts have only one member.

Before the establishment of the National Conference of State Tax Judges, no national association or other formal means existed for judges in one state to confer with colleagues facing similar issues in another jurisdiction. Training in highly technical tax issues requires faculty with specialized expertise and a sophisticated understanding of sometimes arcane provisions.

At the same time, judges must be far more cautious than lawyers in private practice when they seek advice and instruction. They must avoid even the appearance of special access or private influence, particularly when dealing with specialists who may at some point serve as expert witnesses or litigants in their courtrooms. Outside the judicial realm, many educational conferences are sup-

ported by commercial sponsors with special ties to the subject matter, but in the tax area these organizations and corporations would be the most likely to have a stake in future litigation. Public funding for judicial education is rarely a legislative priority, even when budgets are relatively generous, and is among the first items to be curtailed in economic downturns.

All of these factors present special hurdles to the development of effective, ongoing educational programs for members of tax tribunals. The success of the National Conference of State Tax Judges speaks to both the effectiveness of the Lincoln Institute's support and the enthusiastic work of judges across the country who have found it a professionally and personally rewarding means of creating ties with colleagues in other states.

The judges who volunteer to produce each year's program are the cornerstone of the organization. The planning committee members begin monthly telephone meetings soon after the close of the previous conference so they can evaluate participant suggestions and consider topics of particular current importance. Individual judges then contact scholars and professionals who can address these issues.

Faculty members include academic experts in law and economics as well as legislators, policy analysts, appraisers, journalists, and specialists in fields such as housing and commercial property markets.

The central role of the judges themselves is highlighted by a session on case law updates. One of the most lively and interactive parts of the program, this forum offers the participants an opportunity to describe and comment on recent decisions of special interest in their own states. Judges submit these cases in the months preceding the conference to the session moderators, who have responsibility for choosing the cases to be examined and guiding the discussion. Moderating a conference of judges carries special challenges of its own.

Wide Scope within a Specialized Area

The range of topics covered by the conference reflects underlying property valuation problems confronted in changing economic, social, and technological conditions. In the early years, discussions included utility properties, office complexes, and rental apartments, whereas now the focus is likely to be subsidized housing, golf courses, or nonprofit landowners. More complex methods of valuation, made possible by the introduction of computer-based techniques, have also entered the agenda. What approach to value is best suited to a specific type of property? What properties are exempt from property taxation? How does one value properties that are partially taxable and partially exempt, such as a structure that includes a hospital (exempt) and doctors' offices (taxable).

Tax exemptions for charitable institutions are often expressed in legislative language reflecting an earlier and far starker division between commercial and nonprofit enterprises, such as hospitals. Retirement communities that require significant initial and continuing payments may not fit the pattern of a "home for the aged," just as a traditionally exempt YMCA may seem a commercial competitor to a neighboring health club. The continuing challenge of distinguishing exempt and taxable property takes on new forms over time.

Many similar issues of statutory interpretation and the application of legal analysis to new factual situations have been the subject of ongoing examination at the annual conference.

- An income-based approach to value, often useful in the assessment of commercial property,

may require adjustment in the case of shopping malls that rely on the presence of prestigious department stores to draw traffic. These anchor tenants may be allowed to occupy space rent-free or receive concessions and special treatment as an incentive for them to locate in the mall. Should a normal rent per square foot be imputed to the space occupied by such tenants? Is the value of the anchor property reflected in the higher rents that can be charged to other stores as a result of the increased business because of the presence of the anchor tenant?

- Property contaminated by hazardous waste can be unsalable if a new purchaser is responsible for its remediation. Does this situation relieve the current owner of tax liability? Does it matter whether the owner bears responsibility for the contamination? What kind of expert testimony is required to establish the likely costs of and a reasonable schedule for this clean-up?
- The specialized features of a sophisticated manufacturing plant built to the current owner's specifications may have little value to potential purchasers. Does this mean that the current owner's investment has no effect on the property's valuation for tax purposes? Should the result be influenced by the utility of the property, and whether the owner would replace it in the event of damage or loss? Can value to the owner be a factor in determining fair market value?
- The federal income tax code offers various incentives for private parties to invest in housing for low- and middle-income tenants. Should the limited rents that can be charged for these units form the basis of the property valuation, or is it legitimate to consider the income tax benefits that led the owners to make this investment?
- The value of a hotel as a business enterprise includes many intangible elements, from the existence of an assembled work force to the prestige and name recognition of a hotel chain to the use of computerized reservation systems. What are appropriate methods for valuing the real property component of the business?

In addition to valuation questions of this sort, the conference agenda includes a session on developments concerning state income and sales taxes, and presentations on such topics as judicial writing, ethical issues, and the effect of business cycles on

“Through informal as well as formal discussions at the annual meetings, and frequent phone calls during the rest of the year, judges have been able to tap the knowledge, experience, and intelligence of their colleagues all over the nation. The National Conference has provided an introduction and a phone number that have helped many of its members make a better decision concerning issues that at an earlier point seemed intractable. These personal connections may be one of the Lincoln Institute’s greatest contributions to the improvement of tax policy through the improvement of state and local tax adjudication.”

—*Joseph C. Small*

property markets. Judges serving on appellate courts and state supreme courts have also contributed their perspectives on tax decisions that reach them on appeal.

Times of economic stress also require special attention to case management, as property tax appeals increase when market values fall. Courts require flexibility and excellent procedures to offer taxpayers accessible, timely determinations under these circumstances, particularly since economic downturns usually bring reductions in state budgets, and the need to do more with less.

In times of rapidly rising prices, taxpayers are often pleased to see an assessment figure that has not kept pace with market values. In downturns, taxpayers are more likely to be disturbed if bills reflect an earlier assessment date when prices were higher. The Minnesota Tax Court, for example, saw a 50 percent rise in appeals from 2,954 in 2008 to 4,760 in 2009 (through November). The state’s Chief Judge George Perez, the current chair of the National Conference of State Tax Judges, explained, “There’s a direct inverse relationship between Tax Court filings and the economy. When the economy is down, numbers are up. When the economy is up and healthy, the numbers begin to drop.”

Evidence of Impact

Strong ties have been formed among the members of tax courts and tribunals from over 30 states and the cities of New York and Chicago who have participated in the judges’ conference. These connections, as much as the technical material covered at the conference, have provided a means of improving the judicial process. Many participants have observed

that the conference has produced a positive impact on the quality of tax decisions.

Glenn Newman, president of the New York City Tax Commission and Tax Appeals Tribunal, says, “It is remarkable how many issues cut across state lines. The issues we all face can be discussed and analyzed, helping all participants focus and come to a clearer understanding.”

Michelle Robert, counsel to the Maine State Board of Property Tax Review, states, “This is a wonderful conference that offers attendees a forum for exchange of ideas and viewpoints in this area of the law that is truly not otherwise available.”

Chief Judge George Perez of the Minnesota Tax Court, the current conference chair, sums up these perspectives: “It’s the best seminar given for tax judges and tax officials.”

The conference’s contribution to improved tax policy is a tribute to the foresight of those who gathered at Moley House 30 years ago, and the current participants who are eager to carry that benefit to future tax judges as well. **L**

▶ ABOUT THE AUTHORS

JOSEPH C. SMALL is the retired presiding judge of the Tax Court of New Jersey and a former chair of the National Conference of State Tax Judges. Contact: joetax@aol.com

JOAN YOUNGMAN is an attorney and senior fellow and director of the Department of Valuation and Taxation at the Lincoln Institute of Land Policy. Contact: jyoungman@lincolninst.edu