CASE LAW UPDATES PROGRAM
NATIONAL CONFERENCE OF STATE TAX JUDGES
SEPTEMBER 8, 2016

A. VALUATION CASES

In re Delta Faucet, Tennessee State Board of Equalization before the Administrative Judge (Initial Decision and Order 1/21/16)

The Decision rejected an expert appraiser's contention that a functioning manufacturing facility must be valued as if vacant. The witness testified that comparable sales of operating facilities must be adjusted to reflect that those properties were currently in use, and that the income approach to value should reflect a discount for 'lease up'. Other cases pending before the Board also advance the theory, so far without success, that build-to-suit retail properties must be valued as if vacant.

Prentiss & Carlisle Management Co., Inc. v Towns of Smyrna and Merrill, Nos. 2015-001 & -002 (February 8, 2016)

This case concerned how to value logging roads that are built and maintained to give access to tree growth tracts owned by a large timber company. Tree growth land has its own valuation system. Roads that thread tree growth are not included in tree growth acreage.

In Re Colonial Country Club, Tennessee State Board of Equalization before the Administrative Judge (Initial Decision and Order 3/30/16)

The case illustrates the challenges of appraising a declining golf course that once hosted PGA tournaments. A somewhat earlier case accepted a higher valuation of golf course property on the basis of alternate (highest and best) use as residential property (*In re Nashville Golf & Athletic Club* (Initial Decision and Order 2/12/16).

B. ASSESSMENT ON COMMON ELEMENTS OF A CONDOMINIUM

The Top Condominium v. Township of South Orange, Docket Nos. 014840-2011; 016249-2012; 009306-2013 decided June 2, 2014; Superior Court of New Jersey, Appellate Division affirmed August 5, 2016

Municipality assessed property constituting a portion of common elements of a condominium association located in another jurisdiction against the condominium association. Taxpayer appealed on basis that the value of the assessment had to be included in the assessment of unit to the unit holder and thus a separate assessment of the common element to the association constituted a double tax. HELD: Every municipality has a right and obligation under the New Jersey Constitution to assess real property and collect property taxes on real property located in the taxing district. However, NJ Condominium Act requires that all assessments on common elements of a condominium be assessed against and collected on each unit as a single parcel and not on the condominium property as a whole. As a result, assessment of driveway to

condominium (a common element) could not be made to the condominium association and instead had to be assessed to the individual unit owners.

C. ISSUES WITH ADJUSTMENTS AND ASSESSMENTS

***Envart v. Dept. of Rev.*, TC-MD 150446N**

Taxpayer challenged a Notice of Deficiency (Notice) issued by the Oregon Department of Revenue asserting that (1) the Notice was issued for purposes of extending the period of assessment and (2) the adjustments were not made in good faith. The state auditor had issued the Notice despite the fact that he had not reviewed the documentation produced by the taxpayer in response to the auditor's request. Held: (1) The auditor issued the Notice in order to meet the applicable three-year period of limitation for giving a notice of deficiency; he did *not* issue the notice to extend the period of assessment. (2) The auditor's adjustments were *not* made in good faith because he had knowledge of circumstances that required further investigation or inquiry; namely, the documentation provided by taxpayer.

Marion County Assessor v. Simon DeBartolo Group, LP, 52 N.E.3d 65 (Ind. Tax Ct. 2016)

The County Assessor sought review of the Indiana Board of Tax Review's final determination that reduced the assessed value of the taxpayer's real property, i.e., the first enclosed mall in Indiana. The Court upheld the Indiana Board's final determination in its entirety, finding that the county assessor had not established that the final determination was contrary to law or an abuse of discretion because his appellate arguments were unpersuasive and often incoherent, rife with open-ended questions, and lacked citations to both the facts in the certified administrative record and legal authority.

***Thermo Electron v. Wisconsin Department of Revenue*. Wis. Tax Rptr. (CCH) ¶ 402-065 (WTAC 2016)**

The valuation of property used as an office campus by a medical products company was reduced for Wisconsin property tax purposes because the sales used to support the assessed value of the property were not comparable to the subject property and, therefore, were not credible. The assessment of the main campus parcel was flawed because use of the building residual method, whereby land and the improvements are separately valued, was inconsistent with Wisconsin law, generally accepted professional appraisal practices, and the Wisconsin Property Assessment Manual. In addition, several of the improved comparable sales were invalid comparisons. Moreover, valuation of the vacant property on the campus was not credible because the comparable land sales were zoned for entirely different purposes.

D. LAND USE CHANGE TAX

Stratham Subaru v. Town of Stratham, BTLA Docket No. 27584-15LC (July 10, 2015 Decision); published at 2015 WL 6655534 (N.H.Bd.Tax.Land.App.)

This appeal involved a Land Use Change Tax ("LUCT") assessed in New Hampshire when property is removed from current use. (The tax is assessed at 10% of market value at the time of removal.) The taxpayer, a Subaru dealer, entered into a ground lease for one acre of farmland located near the dealership to store vehicles (because, incidentally, Subaru required the dealer to expand its facilities or risk losing its franchise).

The taxpayer challenged the LUCT assessment with an appraisal and expert testimony, and successfully argued certain restrictive conditions imposed by the planning board lessened the market value of the one acre compared to other land available for commercial use. Based on this evidence and a lack of facts supporting the municipality's position, the board abated the LUCT assessment from $395,000 to $120,000, resulting in a $27,500 reduction in the LUCT.

The board also granted (in part) the taxpayer's motion for an award of costs based on a finding the municipality had not "acted with the requisite degree of diligence in responding to the [t]axpayer's appraisal and other evidence prior to the hearing." One of the board's rules provides for an award of costs, as follows:

> Tax 201.39 Costs.
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> (a) Except as otherwise provided by law, costs shall be awarded as in the superior court. The board shall order a party to pay the other party's costs when the board finds the matter was frivolously brought, maintained or defended in accordance with RSA 21-J:28-b, VI, RSA 71-B:9, RSA76:17-b,and RSA 498-A:26-a. All awards of costs shall be limited to reasonable costs.
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> (b) Filing fees shall be refundable in accordance with RSA 76:17-b, and the board shall refund filing fees if the board determines a matter was frivolously brought, maintained or defended.
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> (c) If the board awards costs, the party awarded costs shall:
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> (1) State in writing or on the record the costs sought; and
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> (2) Submit documentation that shall prove the party incurred the costs being sought.
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> (d) Costs for a party's expert witness shall be limited to those reasonable fees incurred for the witness's testimony, but no costs shall be awarded for the witness's research or preparation in accordance with Fortin v. Manchester Housing Authority, 133 N.H. 154, 157-60 (1990).
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> (e) Nothing in this section shall affect the sovereign immunity of the state in its political subdivision.

E. EXEMPTIONS

Fields v. Trs. of Princeton Univ., 28 N.J. Tax 574 (2015) [Decided November 5, 2015]

Defendants, Trustees of Princeton University and Princeton University (collectively "Princeton"), move for the entry of an order establishing that the burden of proof in these matters is upon the Taxpayers, who are challenging the property tax exemption granted to Princeton for the tax years at issue. The Taxpayers oppose the motion, arguing that the burden is always with the party claiming an exemption from taxation, and not with the party challenging the granting of an exemption. Defendant, Borough of Princeton supported the motion.

Held: The presumption of validity given to an assessor's original tax assessment does not extend to determinations of exemptions from local property tax. The court also found that the claimant of an exemption always bears the burden of proof regardless of who is challenging the exemption. Therefore, defendants' motion seeking to place the burden of proof on the plaintiffs, who are third-party taxpayers challenging the exemption granted to defendant Princeton University, was denied.

Fields v. Trs. of Princeton Univ., 2016 N.J. Tax Unpub. LEXIS 30 (Tax Ct. 2016) [Decided May 31, 2016]

Taxpayers issued a deficient filing fee notice in the amount of $25,450 regarding challenge to tax exemption given to 170 parcels owned by Princeton University.

Court after reviewing applicable New Jersey court rules noted that the unusual circumstances of these matters, could lead to some confusion during administrative processing stating "The Tax Court has never seen any actions like these before - private citizens challenging the decision of a local Tax Assessor in granting exempt status to certain properties owned by a not-for-profit University with extensive land holdings. Typically it is the municipality proper making such a challenge; and, there is more commonly just one property, or perhaps just a few properties at issue, where even if the fees were calculated per parcel, they would not add up to any significant amount"

The Tax Court found that the Rules of Court do not support the compounding of fee provisions in exemption challenges that are applicable to "an action to review a real property tax assessment," Furthermore, justice requires that court fees must never be the basis to deny anyone access to the courts regardless of his or her economic situation. The Deficiency Notices were vacated and the filing fees previously paid by plaintiffs ($1,150) in these matters were deemed to satisfy the filing fees required by the Rules of Court.

Evergreen Aviation & Space Museum and the Captain Michael King Smith Education Institute, DBA Wings & Waves Water Park, Oregon Tax Court, TC 5181 and 5182; April 15, 2016

In this case taxpayer asserted that a water park was exempt as a scientific and educational facility as it had a Boeing 747 on the roof, from which happy youngsters could use one of four water slides. Placards and other items were all around the water park discussing flight and water. The facility was named Wings and Waves, and was located near two buildings containing aircraft museums. Most of those facilities had been found to be exempt. This building was, however, a bridge too far.

Appeal of B&G Industries, LLC from a Valuation Decision of the Big Horn County Assessor

Since 2006, B&G Industries LLC (B&G) operated a for-profit airplane body repair business out of privately owned and county-leased structures located on county airport land. The County Board of Commissioners (County Board) leased two hangars and a building to B&G, while B&G owned the other five business structures (hangars and office building). B&G's relationship with the County Board of Commissioners had soured. Although B&G had paid property taxes on the buildings as required under its leases with the County Board, B&G claimed in 2015 that all eight

buildings (hangars, office buildings, etc.) were exempt from property taxes because they were "used primarily for a governmental purpose" under W.S. 39-11-105(a)(iii) (2015) and Article 15, § 12 of the Wyoming Constitution. B&G also sought a refund of property taxes which it claimed were assessed illegally or erroneously. The County Assessor denied the exemption request and refund claims. Because the County Board of Commissioners, sitting as a local board of equalization, was conflicted, the State Board of Equalization agreed to hear the matter directly on certification.

The State Board of Equalization reversed the Assessor's decision on two of the eight structures and affirmed denial of exempt status on the remaining six buildings. The State Board held that under the Constitution and state statute, only government owned buildings, used primarily for a governmental purpose, qualified. Accordingly, the five privately owned buildings were taxable regardless of how they were used. The two main hangars leased to B&G, however, were used primarily for a governmental purpose because B&G was the sole provider of several important aviation services in the area, including the ability to receive aircraft, tow, perform large aircraft body repairs, sell jet fuel, and provide other services. These hangars, consequently, served as "reasonably necessary or essential facilities to the efficient operation and maintenance of the airport." ¶¶ 67, 82-88. B&G failed to carry its burden of proving that one leased storage building was used primarily for a governmental purpose. Critical in its analysis, the State Board held that B&G, although not a "fixed-base operator," offered several otherwise unavailable services and attracted business to the airport. The State Board denied the refund claims because under Wyoming's tax remedies statutes, B&G's failure to timely challenge taxation barred its refund claims. Among several interesting issues, B&G's standing to challenge taxation of government leased property, contrary to the government owner's wishes, was an issue of first impression. Also, the County Attorney's representation of the County Assessor included the County Board's discord with B&G even though the County Board was not a party.

Savage Mills Enterprises, L.L.C. v. Borough of Little Silver, Docket No. 008737-2015; decided June 21, 2016

Held: Plaintiff filed a complaint in this court challenging the 2015 assessment upon the property it owns in defendant Borough. Included as a separate count was a claim for a partial exemption because a portion of the subject property was occupied by a non-profit charitable entity, which owned the building on the subject property, actually used it for entirely charitable purposes, and was a ground lessee under a 99-year renewable lease. Defendant moved to dismiss the complaint on grounds that this court lacked subject matter jurisdiction to rule on a contract issue since the 99-year lease agreement required plaintiff to pay any and all taxes on the portion of the subject property owned and occupied by the non-profit entity. Plaintiff cross-moved. The court ruled that plaintiff, as property owner in fee, has standing to assert a claim for partial exemption as part of its challenge to the subject property's assessment under N.J.S.A. 54:3-21. However, standing to claim exemption does not provide entitlement to the exemption. To obtain a partial exemption, the claimant must satisfy all the requirements of the exemption statue, here, N.J.S.A. 54:4-3.6. Plaintiff failed to meet the statutory requisites. The court therefore denied defendant's summary judgment motion in part, and granted plaintiff's cross-motion in part as to plaintiff's standing to claim the exemption; and granted defendant's summary judgment motion in part and denied plaintiff's cross-motion in part as to plaintiff's entitlement to, and grant of, a partial exemption.

Appeal 14-45 *et al.*— A redacted copy of Appeal 14-45 et al. is available at http://www.tax.utah.gov/commission-office/decisions.
The Utah State Tax Commission found that a centrally assessed taxpayer with a gathering pipeline and compressor station system built upon rights-of-way over Indian trust land and public lands managed by the BLM and Utah's State Institutional Trust Lands Administration (SITLA) has standing to challenge the tribal exemption amount applied to the system when appealing an original assessment made by the Property Tax Division and five years of escaped property assessments. The Commission determined that the tribal exemption does not apply to land that was once within a reservation, later opened to allotment and then returned to the public domain but never subsequently designated as Indian trust land. The Commission concluded that the taxpayer is entitled to an exemption applied only to that portion of the system crossing over Indian trust lands and based only upon the percentage of tribal ownership of the system. In establishing fair market value for the system, the Commission rejected the small firm size premium applied by the taxpayer's appraiser in his DCF analysis and an inutility penalty he factored into his RCNLD calculations. The Commission also corrected the Property Tax Division's description of the statutory minimum value for mining property.

Harold Warp Pioneer Village Foundation v. Tax Commissioner, 844 N.W.2d 245, 287 Neb. 19 (2013)
Nebraska Tax Commissioner brought an appeal challenging the decisions of the Kearney County Board of Equalization granting property tax exemptions for the Harold Warp Pioneer Village Foundation's campground and motel, both adjacent to the Foundation's museum. The County Assessor had for each year for some 25 years granted exemption applications made by the Foundation for the museum, but had denied exemption applications for the campground and motel. Over the same period, the County Board of Equalization had overruled the Assessor's decisions regarding the campground and the motel and had granted the exemption applications. The Assessor had never appealed these grants of exemptions by the County Board. In 2011, the Nebraska Legislature authorized the Tax Commissioner to appeal such decisions of the County Boards. The Tax Commissioner appealed the grants of exemptions to the Tax Equalization & Review Commission.

The Nebraska Constitution allows for exemptions from property taxation for properties "owned by and used exclusively for … educational … purposes, when such property is not owned or used for financial gain or profit to either the owner or user." Neb. Const. Art. VIII, §2.

Nebraska law further allows permissive property tax exemptions for "[p]roperty **owned by educational … organizations … for the exclusive benefit of any such educational … organization, and used exclusively for … educational … purposes, when such property is not (i) owned or used for financial gain or profit to either the owner or user,** (ii) used for the sale of alcoholic liquors for more than twenty hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. For purposes of this subdivision, educational organization means (A) an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or assisting students through services relating to the

origination, processing, or guarantying of federally reinsured student loans for higher education or (B) a museum or historical society operated exclusively for the benefit and education of the public." Neb. Rev. Stat. §77-202(1)(d) (emphasis added). Nebraska case law requires that exemption statutes be strictly construed, with the burden on the applicant seeking exemption.

Prior to the hearing before the Commission, the parties stipulated to several of the required factors, including that the campgrounds and motel were not used for financial gain or profit, but they did not stipulate that the exclusive use of the properties were for educational purposes. The only disputed issue was whether the campground and motel were used exclusively for educational purposes. On that point, the Nebraska Supreme Court has interpreted "exclusive use" to mean primary or dominant use.

The tax-exempt Pioneer Village museum displayed over 50,000 exhibits in 28 buildings on 20 acres of land. The most pertinent evidence adduced was undisputed: some museum exhibits were displayed throughout the motel; the conference room of the motel was sometimes used for museum guests in larger groups; 96% of motel guests also visited the adjacent tax-exempt museum (the rental of a motel room included one complimentary museum pass); 30% of museum visitors stayed for two consecutive days; 30% of museum guests also stayed overnight at the campground or motel; the 88 room motel averaged 10% occupancy; the nearest lodging, other than the campground and museum, was more than 20 miles away; and guest revenue from the campground and motel was partially used to meet payroll for museum employees.

The Commission noted that 70% of the museum guests did not use the lodging facilities of the campground or motel, finding that the campground and motel parcels were not exclusively used for educational purposes and that such educational uses were incidental to the primary or dominant uses of the lodging purposes of the campground and motel.

The Nebraska Supreme Court reversed the Commission's decision, and ordered that the grant of the exemptions by the County Board be affirmed. The Court concluded that, "the motel and campground are beneficial to the museum and reasonably necessary to further its educational mission and are therefore entitled to property tax exemptions." The Court did not seem to be persuaded by the fact that 70% of the museum guests did not use the lodging facilities of the campground or motel. The Court followed two prior decisions, one involving a ranching operation associated with an exempt Boys Ranch, and the other involving a childcare facility operated for the benefit of employees of an exempt hospital. In the prior cases, the ranch land and childcare facility were each granted an exemption.

The Court appeared to reason that so long as the campground and motel were owned by the Foundation for the exclusive benefit of the Foundation, the exclusive use requirement was satisfied. The Court stated, "we must undertake a broader examination of whether those lodging facilities are reasonably necessary to the educational mission of the Foundation's museum." The Court concluded, "[t]he issue is not whether " lodging" is an educational use in an abstract sense, but, rather, whether these specific lodging facilities were reasonably necessary to accomplish the educational purpose of the Foundation in the operation of its museum."

Moline School District No. 40 Board of Education v Patrick Quinn, Governor, State of Illinois, et al. 2016 IL 119704, 54 N.E.3d 825, 2016 Ill. Lexis 746 (June 16, 2016)
Granting preferential property tax treatment to an aircraft support services company leasing property from a particular airport authority violated the prohibition against special legislation in Ill. Const. art. IV, § 13 because there was no reasonable basis for not providing tax incentives to similar businesses at other airports, absent evidence of any particular set of economic circumstances in the county that did not exist elsewhere or that would warrant special property tax incentives for businesses located there. The challenged law did not require that the company actually use the tax savings to expand in Illinois.

In re Proton Therapy Center, Tennessee State Board of Equalization before the Administrative Judge, Initial Decision and Order 8/17/15
The case established a charitable use exemption for a cutting edge outpatient cancer treatment facility operated non-profit. The Board had previously limited the non-profit health care exemption to licensed hospitals, nursing homes, and other licensed facilities. The judge was convinced that certificate of need requirements applicable to the subject property were a suitable proxy for licensure, and that the facility otherwise made its services appropriately available to persons unable to afford care.

New Jersey Turnpike Authority v. Township of Monroe, Docket Nos. 015412-2013; 006364-2014; decided February 2016
Property purchased by plaintiff as part of plaintiff's mitigation obligation to the New Jersey Department of Environmental Protection in connection with, and for, a highway construction project is exempt from tax under N.J.S.A. 54:4-3.3b. Although this statute allows exemption based on the status of the owner, such as plaintiff, a State Authority, the exemption is also dependent on use of the property for statutorily authorized purposes. Since property acquisition for mitigation was directly due to, and as a result of plaintiff's Turnpike Widening Project, it qualified as part of a transportation project, and thus, was tax exempt under N.J.S.A. 27:23-12, plaintiff's enabling statute. Therefore, the property is exempt for tax years 2013 and 2014. However, since plaintiff did not timely appeal the loss of exemption for tax year 2012, it is time barred from such relief as part of its summary judgment motion for tax years 2013 and 2014. That defendant's assessor provided an exemption under N.J.S.A. 54:4-3.3b for tax year 2011 does not suffice to grant exemption in the absence of a timely appeal.

F. INCOME TAX CASES

In the Matter of The McGraw Hill Companies Inc. TAT(E)10-19 (GC) et al., New York City Tax Appeals Tribunal, October 28, 2015
The NYC Department of Finance did not violate Petitioner's first amendment rights in disallowing Petitioner's use of an audience method to allocate its receipts from generating credit ratings. Petitioner also did not establish that its receipts from generating credit ratings should be allocated as "other business receipts" under New York City Administrative Code §11-604.3(a)(2)(D). Finally Petitioner did not prove that the Tribunal should exercise the Commissioner's

discretion under Administrative Code §11-604.9 to permit it to use the location of visitors to its free website to allocate Petitioner's receipts from generating credit ratings.

Columbia Sportswear USA Corp. v. Indiana Dep't of State Revenue, 45 N.E.3d 888 (Ind. Tax Ct. 2015), [review denied]

Columbia Sportswear sought review of the Department's adjustments to its net income. The Tax Court granted summary judgment to Columbia Sportswear because Indiana Code § 6-3-2-2(l)(4), which mirrors § 18 of UDITPA and only concerns the concepts of allocation and apportionment, did not authorize the Department's adjustments that increased Columbia Sportswear's federal taxable income and, thus, its Indiana net income tax base. Moreover, the Court determined that the Department's adjustments were not authorized under Indiana Code § 6-3-2-2(m) because: 1) the Department did not designate any additional evidence beyond its proposed assessments to support its allegation that Columbia Sportswear's income was not fairly reflected under the standard sourcing rules; and 2) Columbia Sportswear's designated evidence (i.e., transfer pricing studies that established its intercompany transactions were conducted at arms-length rates) demonstrated that its income was fairly reflected under the standard sourcing rules. In reaching this determination, the Court incorporated by reference its rationale in Rent-A-Center East, Inc. v. Indiana Department of State Revenue, 42 N.E.3d 1043 (Ind. Tax Ct. 2015), review denied. Finally, the Court explained that the Department could not prevail even if the Court presumed that the taxpayer's income was not fairly reflected under the standard sourcing rules because the Department's actual adjustments, which attributed over 99% of the income certain corporate affiliates to Columbia Sportswear, were unreasonable based on the taxpayer's Indiana business activities.

In the Matter of Astoria Financial Corporation & Affiliates TAT(E)10-35(BT)et al., New York City Tax Appeals Tribunal, May 19, 2016

Petitioner did not have to include FIDATA Service Corp. (FIDATA) a Connecticut passive investment company in its combined New York City Banking Corporation tax return for each of the tax years ending December 31, 2006, December 31, 2007 and December 31, 2008. Petitioner rebutted the presumption of distortion by establishing that prices paid by FIDATA in the intercorporate transactions between FIDATA and Petitioner were arm's length prices. In addition, the record does not support a finding that there was "any agreement, understanding or arrangement" between FIDATA and Petitioner that resulted in the improper reflection of the "activity, business, income or assets of" Petitioner requiring the inclusion of FIDATA in the combined returns under New York City Administrative Code §11-646(g).

G. SALES AND USE TAX CASES

ARTY'S, LLC v. Wisconsin Department of Revenue, Docket No. 14-L-178, Ruling and Order – May 19, 2016

The Commission found that the liquor tax applies to the full volume of bottled pre-mixed cocktails sold by Petitioner. Petitioner had argued that the nonalcoholic mixer portion of bottle contents should not be taxed. The Commission found that the entire beverage sold was "an intoxicating liquor" subject to the liquor tax, which applies to beverages with alcohol concentrations as low as 0.5%.

Dick Greenfield Dodge v. Director, 2016 N.J. Tax Unpub. LEXIS 27 (N.J. Tax 4/28/2016)
The issue in this matter is whether the amount of sales tax indicated on a written sales invoice as being collected from the customer must be remitted to the Director regardless of any unprinted sales tax reduction included in a discount. The requirement that a seller, as a de facto tax collector, turn over all sums which it informed customers would be collected not only satisfies New Jersey statutory requirements, but also satisfies a number of important policy considerations. First and foremost, the taxpaying public must have confidence in a system in which the government relies upon private third parties to collect a tax. Second, accepting a seller's claim that the printed invoices do not reflect reality can lead to mischief. Third, from a competitive standpoint, including the sales tax discount with a parts and service discount misleadingly inflates the discount which the seller is providing the customer. Fourth, the Director is not required to go on a searching inquiry to determine if individual customers understood that some amount other than what was explicitly stated was collected. Fifth, the amount of a separately stated sales tax is used in the administration of other tax laws.

Crystal Flash Petroleum, LLC v. Indiana Dep't of State Revenue, 45 N.E.3d 882 (Ind. Tax Ct. 2015)
Crystal Flash Petroleum a convenience store that also sold mid-grade gasoline, sought review of the Department's denial of its claim for a refund of sales and use tax paid on its purchases of certain ice production, food preparation, and mid-grade gasoline equipment pursuant to an equipment exemption. A taxpayer's eligibility for this exemption depends on whether 1) it is engaged in production, 2) it has an integrated production process, and 3) its equipment is essential and integral to its production process. On the Department's motion for partial summary judgment, the Department was granted judgment regarding the ice production equipment because the taxpayer admitted that it had already received a refund for those items. The Department was also granted judgment with respect to the food preparation equipment because Crystal Flash's designated evidence did not create a genuine issue of material fact as to whether that equipment was used in an integrated production process. As to the mid-grade gasoline, neither party was granted judgment because there was a genuine issue of material fact regarding whether the taxpayer was engaged in production when it mixed high-grade and low-grade gasoline.

H. GROUP DISCUSSIONS

1. **Imposition of sanctions** for appeals that are frivolously brought, maintained or defended.

2. What is the **procedural role of the municipality if it chooses to participate**? Intervenor v. cross-appellant v. necessary impleaded party; procedure to join municipality; what weight to give to municipality's evidence v that of Dept; those types of things. In one case we viewed the City simply as additional evidence for the Department's value; in others we treated it as though we had three values to choose from. What happens if we choose the City's valuation in light of our role to uphold the assessment or not? Petitioners have occasionally mentioned procedural irregularities but the issue has always disappeared before we have needed to address it.

3. Wyoming State Board of Equalization - Summary of Issue: **Abstract Review of Locally Assessed Property**

In June 2016, Longmire County, Wyoming, submitted its 2016 Abstract to the State Board of Equalization (State Board). Upon receipt of the Abstract, the State Board reviews certain mass-appraisal metrics to ensure the constitutional and statutorily required uniform valuation of locally-assessed properties from county to county in Wyoming. The State Board evaluates appraisal uniformity in four property classes: Residential Improved, Residential Vacant, Commercial Improved, and Commercial Vacant. The Board identified several areas of statistical nonconformance in Longmire County. In fact, Longmire County has not conformed to these metrics in certain areas for at least the past 5 years. Adding to this intrigue is the fact that the property owners are often out of state, and have the financial ability to tie the local assessor's office and the county board of equalization, and ultimately the State Board and courts, up with numerous appeals for many years.

Review of the abstract indicated that, in particular, Longmire County's Commercial Improved properties were greatly undervalued, and worsened from 2015 to 2016 even though the county was operating under a State Board imposed work plan from the previous year. Because this undervaluation trend has occurred for at least the past 5 years, the State Board believed the county had a systemic issue that needed to be addressed. In addition, the State Board's 2016 sales ratio studies of Longmire County's Residential Improved and Residential Vacant property classes also indicated undervaluation, a reversal from previous years, indicating to the Board there were additional problems.

Because the Board met with resistance the year before in response to the Board's work plan to correct these deficiencies, and because the issue did not appear to be getting better in response to the 2015 work plan, the State Board issued an Order to Longmire County and the local assessor to take several steps to correct this problem in a two-year time frame. Those steps included: monthly meetings with the Department of Revenue (DOR); compliance with all DOR recommendations; reports on all remedial measures taken; complete all effective age and depreciation adjustments for all commercial properties; verify all commercial sales immediately; submit all data requested from the Board's statistician; complete a comprehensive commercial land valuation study. Noncompliance with the Board Order will likely result in an equalization action.

4. **Proposed rule** for a limitation on the use of employee witnesses by persons appearing before the Tennessee State Board of Equalization in a representative capacity.

I. ADDITIONAL CASES (TIME PERMITTING)

Marion Cnty. Assessor v. Washington Square Mall, LLC, 46 N.E.3d 1 (Ind. Tax Ct. 2015)
The County Assessor appealed the Indiana Board of Tax Review's final determination that adopted the valuations set forth in the taxpayer's appraisal because it found the taxpayer's appraisal to be more persuasive than the assessor's appraisal. The Court upheld the final determination, but only in part, concluding that because certain aspects of the taxpayer's sales comparison and income approaches were not supported by substantial evidence, the taxpayer's assessments must be adjusted to conform to the supported and reliable record evidence.

Johnson Cnty. Prop. Tax Assessment Bd. of Appeals v. KC PROPCO LLC d/b/a KinderCare Learning Ctr., 28 N.E.3d 370 (Ind. Tax Ct. 2015).
The County Assessor and County property tax assessment board of appeals appealed the Indiana Board of Tax Review's final determination that Kindercare's real property qualified for an educational purposes real property tax exemption. Substantial evidence supported the Board's determination that parent company's affiliate owned the real property while it operated the early learning center on property. Also, substantial evidence existed in the record to support the Board's finding that the property on which early learning center was operated was used for education purposes, and the entire parcel of real property qualified for exemption, not just land attributable to footprint of building in which early learning center was located.

Pulte Homes of Ind., LLC v. Hendricks Cnty. Assessor, 42 N.E.3d 590 (Ind. Tax Ct. 2015), review denied
Pulte, a homeowners' association, instituted an original tax appeal from the final determination of the Indiana Board of Tax Review dismissing its petitions for correction of an error in property tax assessment. The Tax Court affirmed the Board's decision holding that the Petition for Correction of Error ("Form 133") was not the proper appeal procedure (the Form 133 is for objective errors such as math errors only and may correct up to three years of error unlike the regular appeals procedure, Form 131, that addresses only the current year for any claims) for the taxpayer to assert its claims that assessment of its common land area was illegal as a matter of law. The Court also determined that the Indiana Board of Tax Review did not err when it dismissed Pulte's case on procedural grounds without conducting an evidentiary hearing.
See also Muir Woods, Inc. v. O'Connor, 36 N.E.3d 1208 (Ind. Tax Ct. 2015), review denied (also addressing the use of the Form 133).

Grandville Coop., Inc. v. O'Connor, 25 N.E.3d 833 (Ind. Tax Ct. 2015)
In 2009, this Court issued a decision that held that the provision of affordable housing to low-income persons was not a *per se* charitable purpose. See Jamestown Homes of Mishawaka, Inc. v. St. Joseph Cnty. Assessor, 909 N.E.2d 1138, 1144 (Ind. Tax Ct. 2009), review denied. As a result, the PTABOA sent Grandville, a 156–unit multi-family cooperative apartment complex, a letter requesting that it complete a 4-page worksheet "to help [the PTABOA] better understand the services [that Grandville] provides to [its] tenants." After conducting a hearing, the PTABOA revoked Grandville's exemption for the 2010 tax year, but after a hearing, the Indiana Board of Tax Review denied Grandville's motion for summary judgment that the county tax assessment board of appeals lacked statutory authority to revoke complex's charitable purpose tax exemption. On appeal, Grandville claimed its real and personal property were exempt from

property taxation because it was owned, occupied, and exclusively used for the charitable purpose of providing affordable housing to low-income persons and that the revocation of its exemption was untimely. The Assessor, however, filed and was granted a motion to dismiss for lack of subject matter jurisdiction because the Indiana Board's summary judgment order left a substantive issue undecided and thus, was interlocutory because it did not end the administrative process. Moreover, the Tax Court held that Grandville had failed to exhaust its administrative remedies and did not establish extraordinary circumstances that might excuse the exhaustion requirement.

J. ADDITIONAL CASES

Lanier 2016 Conn. Super. LEXIS 1209, Decided June 1, 2016

Consolidated tax appeal involves four residential homes located on the Shippan Peninsula in the city of Stamford. Three homes are contiguous properties and the fourth home is separated by one other property lot. All are located on that part of the Shippan Peninsula that is most prominent to Long Island Sound, which is low-lying, approximately 10 feet below sea level, and subject to periodic flooding. Of particular significance to the issue of valuation was the fact that the Shippan Peninsula was hit by two major storms: Irene in September 2010 and Sandy (shortly after the October 1, 2012 revaluation date) on October 29, 2012. As a result of these two storms, significant adjustments were made by Congress which affected flood insurance protection of home owners (such as those of the subject homes).

Comparing the important aspects of the comparable sales selected by the appraisers, it was noted "the primary driving factor for residential properties with direct water frontage is total linear frontage on the water." (Municipal expert of the opinion that water frontage (125 feet or less) had a market value of $20,000/linear foot. Water frontage over 125 feet had a reduced market value of $5,000/linear foot.)

Taxpayers presented a realtor with extensive experience listing property for sale in the Shippan Peninsula, (knowledge goes, not so much to the valuation process, but to an understanding of the real estate market at the time of the revaluation on October 1, 2012). Realtor opined, based on his sales experience, that the west side of the Shippan Peninsula was more desirable than the east side, where the subject properties were located. He testified that (1) The west side was not exposed to the type of flooding that occurred on the east side; (2) the history of listings on the Shippan Peninsula; (3) the lack of sales in the flood zones; (4) the eastern exposure to Long Island Sound; and (5) and the uncertainty of buyers with respect to increases in premiums due to flood insurance changes. In his opinion, all of these considerations contributed to the difficulty in marketing property such as the subject properties and that the final sale price of properties located on the east side of Sea Beach Avenue were deeply discounted when compared to their original asking prices.

Corpridge Lane Co. LLC v. Town of Rocky Hill, 2016 Conn. Super. LEXIS 90 [Decided January 22, 2016]

The plaintiff, brought this real estate tax appeal challenging the town's valuation of six remaining vacant lots located in its 15 lot Office Park.

The subject six lots are located in an Office Park District (OP) zone. These six lots were designed primarily to serve as a large scale office and light industrial use permitting structures of 15,000 sq. ft. or larger subject to site plan approval. A special permit is needed to develop the sites for hotels, motels, utilities, public buildings, public and private schools, places of worship and assisted living facilities. Apartment complexes are permitted as a mixed use of the site, but require a special permit. The OP district requires lots to have a minimum of three acres. All of the six lots meet this acreage requirement.

One particular problem with the location of the Office Park is its proximity to the I-91/West Street interchange (Exit 23 off I-91), which makes it subject to Connecticut State Traffic Commission ("STC") approval. Each parcel developed must obtain STC review and approval in the context of potential off-site improvements to the interchange. No current specific limit on the total amount of developed space permitted prior to interchange improvements is in place, although the original approvals in 1986-87 reflected a limit of 1,300,000 sq. ft. that was rescinded in October 1991 in favor of parcel-by-parcel review and approval."

The property has constantly been marketed during its lifetime, and the gaps in development roughly correspond to the effects of periodic economic recessions, including the most recent Great Recession from 2008-2010.

The highest and best use of the subject six lots was found to be that of a purchaser, as of October 1, 2013, seeking to acquire each of the six lots with an expectation of owning the lots over a lengthy period of time, paying taxes and costs of maintenance and with a marketing plan based upon an expectation that the economy will improve in the future. The court recognized that there is very limited demand for the present purchase of the subject lots and that the value of each of the six lots as of October 1, 2013 was somewhere between $49,000 and $136,000 per acre. The court found that a limited market for the subject lots does exist, and the court to conclude based upon sales presented that the value of the individual parcels on October 1, 2013 was $95,000 per acre.

Girish Arora v Town of Redding, Connecticut Superior Court, Judicial District of New Britain, January 22, 2016

The subject property is a single family two story colonial house with a three car garage containing 4,370 square feet of gross living area. The house contains four bedrooms, three bathrooms and two half baths. On the grand list of October 1, 2012, the assessor determined that the fair market value of the property was $1,076,000. The plaintiff's appraiser was of the opinion that the fair market value of the property was $810,000 as of October 1, 2012 and the town's appraiser was of the opinion that the fair market value of the property was $900,000 as of October 1, 2012. Both appraisers used the sales comparison approach. Because the town's appraiser was of the opinion that the value of the property was $176,000 less than the assessor's valuation, the court found that the plaintiff had established "aggrievement". The court also found that the value of the property as of October 1, 2012 was $875,000.

Second Taxing District of the City of Norwalk v. Town of Wilton, Connecticut Superior Court, Judicial District of New Britain

The Second Taxing District of the City of Norwalk is a municipal corporation located which provides a public water supply system. It owns real estate in the City of Norwalk, the Town of New Canaan and the Town of Wilton and supplies public water to residents of the City of Norwalk and the Town of Wilton. At issue is the fair market value of 10 parcels of real estate located in the Town of Wilton in connection with its water supply system. The Connecticut legislature (General Statutes § 12-76) has deemed that the highest and best use of reservoir land is "improved farm land". The court found the valuation of the 1,167.03 acres to be $8,000/acre, for a total valuation of $9,336,240.