

ITS OFFICIAL...INDIANA SUPREME COURT OKS THIRD PARTY PERSONAL PROPERTY AUDITS

In March the Indiana Supreme Court accepted, reviewed and reversed (Tippecanoe County, et al., v. Indiana Manufacturer's Association, et al.) an earlier Tippecanoe County Court decision regarding the use of third party independent contractors for personal property tax audits. This ruling is likely to affect most commercial and industrial taxpayers in the state.

This ruling caps a debate that has been raging for almost three years. It started in 2000, when the state board notified the counties that it had decided to reduce its auditing efforts and encouraged local assessors to conduct their own audits or hire outside auditing firms. Until that point, the state board of tax commissioners had examined and verified a number of selected returns each year. These usually were the more complex returns filed by large commercial and industrial taxpayers. The counties, due to lack of resources, did little auditing on their own.

After the state made the suggestion a number of counties did hire outside firms to handle their audits. One of those counties was Tippecanoe. That county is located in central Indiana and is home to a number of large manufacturers including Alcoa and A.E. Stanley. They decided to hire Tax Management Associates, Inc. (TMA) to conduct their audits. When these large manufacturers received letters that TMA staff would be conducting audits, they objected. They, along with the Indiana Manufacturer's Association, sought an injunction of the TMA audits. They argued that the TMA audits were contrary to law because: the assessor did not have the authority to delegate the auditing function to a third-party independent contractor, the audits would violate the confidentiality statute in the Indiana tax code and that the contingent fee nature of the TMA contract, TMA was being paid based on a percentage of collections, violated due process. The Tippecanoe County Court agreed and issued an injunction. *(continued on page 2)*

Contrary to Popular Opinion, Its Not Optional in Texas

Harris County, TX, was able to claim \$1,077,572.87 in back taxes from Enron Broadband Service in December 2002 as reported in the *Houston Chronicle*. Enron Broadband, a Division of Enron, had been indicted for claiming \$500 in furniture and fixtures in a warehouse, when in fact; it contained more that \$20 million in computer and telecommunications equipment.

It was former Enron employees, familiar with the warehouse, which aided the investigation. It was learned that approximately \$25 million in equipment had not been reported in 2001 and about \$5 million in 2000.

While Texas law requires owners of personal property used to generate revenue to provide a list of the property and its value to the appraisal district, it is believed nearly 60 percent of the businesses required to do so, do not fully divulge their property. It is believed that they misinterpret the law to mean the reports are optional.

More than sixty lawsuits are expected to be filed on behalf of just this appraisal district against companies that did not file renderings in 2002.

Score One for Business Taxpayers

In a dramatic turn of events, the Illinois House of Representatives defeated a bill designed to oust the Property Tax Appeal Board (PTAB) from Cook County, IL. The vote on Senate Bill 620, taken on May 21, 2003, was 77 nays to 26 yeas.

You might recall that PTAB had been in place for the entire state of Illinois with the exception of Cook County. In 1996, that changed and PTAB was available to Cook County Taxpayers. PTAB gives the taxpayer an alternative to filing a lawsuit in Circuit Court. If PTAB were eliminated from the appeal process, taxpayers would be forced to file lawsuits in Circuit Court. Appeal costs would increase, the dockets would be jammed and taxpayers would pay higher property taxes for five to six years before their case would be heard in court.

Karen Dabek, Manager Ad Valorem Taxes, commented, "We saw the business community really come together and voice their opposition and make the legislators see how this was going to affect the franchisees and smaller business communities. We are very pleased with the result."

(Continued from page 1)

Personal Property Audits

The county then petitioned the Supreme Court for an emergency review of the county court decision. The Supreme Court found that the assessor had the authority, under Indiana's Home Rule to delegate its auditing duties to a third-party independent contractor for both omitted and undervalued property.

The court also ruled that the disclosure of confidential taxpayer information to employees of TMA did not violate the confidentiality statute. Furthermore, the court held that contingent fee arrangements did not violate due process because the assessor actually issues the final assessment notices and taxpayers have an opportunity to appeal those determinations.

While the Supreme Court was deciding the case and before they issued their ruling, the Indiana General Assembly amended certain provisions to deal with third-party personal property audits. The Legislature granted assessors the authority to deal with third-party auditors. They also provided for penalties should the third party auditor disclose confidential taxpayer information and they prohibited contingent fee audit contracts. The TMA contracts in Tippecanoe County were in place prior to the statutory amendments so the court interpreted the laws in effect at the time the case arose.

The long and short of it is that both the Legislature and the Supreme Court have okayed third party audits of personal property returns in the state of Indiana. Expect your card or letter to be arriving soon.

Desperate Times Require Desperate Measures...

The headlines are becoming all too familiar, the results all too gut-wrenching, as states across the country take drastic measures as they try to shore up budgets racked by huge deficits and dismal prospects of additional revenue. State jobs, education, Medicare, and other social welfare programs are facing sharp cuts. Those most greatly affected by this trend include the poor, the elderly and school age children.

Louisiana, New Mexico, South Dakota, Wyoming, Arkansas, and Colorado trimmed their school weeks to 4 days. Teachers in other states are being asked to "multi task" as janitors as well as teachers.

In the property tax arena we are feeling the pinch as well. Many local taxing jurisdictions face a reduction in funds funneled to them from the revenue strapped state. This results in their search for new funding sources or their focus on more carefully enforcing current laws. An example recently came to light in Connecticut where the state Supreme Court upheld a ruling against the Bridgeport Rescue Mission, a not for-profit that operates a substance recovery program. The Mission now faces a \$300,000 property tax bill. This resulted from the local municipality aggressively enforcing a General Statute that disallows tax-exempt status for properties used for housing. The city's position was upheld because the low and moderate-income housing provided by the Mission was not of a purely "charitable purpose".

The success of this case has encouraged other taxing jurisdictions to become more aggressive in their enforcement of local statutes. They also have become much more protective of the property tax dollars they collect. So, we face increasing resistance to any type of property tax appeal action.

...And that Requires Increased Communication

This makes the communication between our clients and us even more essential than before. A constant flow of information is vital to our effectiveness. Knowing the status of your properties will not only assist us in appealing your assessment and reducing your taxes, it can also help us save you money in the other areas such as exemptions. What does E&A have to know? What is important to tax administration? What is worth sharing? Besides the usual; assessment notices, tax bills and damage, here is a short list of common circumstances that may have an effect on property taxes. If one of your properties undergoes any of the following, let us know right away.

- ***New Acquisition**—It is not uncommon for an assessor to "chase a sale" and raise a building's assessment. We need the purchase price, building specs and costs.
- ***Lease renewals/terminations**—Current rents and terms can be used as a basis for appeal, especially if renegotiated. Changes in tax liability should be renewed immediately after termination
- ***Idle, Surplus, For Sale**—When a change in the use of a property occurs, obsolescence may exist. This may be cause for a tax reduction.
- ***New Construction/Remodeling**—Start dates, permits and actual costs can all affect value. Real vs. Personal property issues can also be addressed to avoid double taxation.

OHIO---GUIDANCE VS. SUPERVISING

A Cuyahoga County Board of Revision dismissed a complaint challenging the valuation of property for Ohio property tax purposes because, although affidavits showed that attorneys were consulted in the preparation of the complaint and appeared on behalf of the taxpayer at the proceedings, the preparer and signatory on the complaint was not an attorney. There was also no evidence that an attorney participated in the actual preparation and filing of the complaint. The taxpayer failed to provide legal precedence that guidance of an attorney would afford the same protection to the taxpayer as that afforded when an attorney has negligently prepared and filed a complaint. Even though the taxpayer's majority shareholder was an attorney, was consulted during the preparation of the complaint and was authorized to file the complaint, he did not supervise the filing so the valuation stood.

