**INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS 42nd ANNUAL LEGAL SEMINAR**
**"Navigating Change"**
**"Cases of Note in Your Jurisdictions": Discussion Outline**
**(Chicago, Illinois—December 12, 2024)**
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## Michigan

**Blythefield Country Club v. Plainfield Township, MOAHR Docket No. 23-002637 (Michigan Tax Tribunal, Judge Halm, March 6, 2024), https://www.michigan.gov./taxtrib/entiretribunal/decisions/accordian/2024/first-quarter-decisions**

**Facts:** Respondent brought motion for summary disposition to dismiss and for attorney's fees and costs alleging Law Firm which had filed the appeal had no authorization to do so; that the appeal was frivolous; and that awarding fees and cost was a necessary deterrent.

**Decision:** While the Petitioner had the legal capacity to initiate a tax appeal and the Tribunal had subject matter jurisdiction over the appeal, as the "party in interest" the Petitioner had not authorized the filing of any appeal. "The Tribunal will dismiss this appeal once the award of costs and attorney's fees has been finalized."

- Petitioner failed to timely respond to Respondent's Request to Admit that "no party in interest or party with standing to pursue an *ad valorem* tax appeal . . . authorized the filing" and such silence admitted lack of standing.
- Petitioner, as owner and "the actual party in interest", supported the motion to dismiss because its General Manager and COO had informed the Respondent that "no one authorized" the filing, characterized as "nefarious, rogue actions".
  - ✓ "[I]t did not choose to initiate this appeal nor is it taking part in this appeal. The mere act of filing an appeal in an entity's name does not oblige that entity to participate in an unauthorized appeal. Petitioner cannot be forced into litigation it does not desire and which was brought against its will."
  - ✓ "While there is no doubt that this appeal was frivolous, a finding in this regard is not necessary because good cause exists otherwise to award costs and attorney's fees."
    - ➢ The signature on the complaint form was unauthorized.
    - ➢ "¶19 states that 'Petitioner request the following relief . . . 'could not be further from the truth."
    - ➢ Incidentally, Respondent also pointed to another case in which the Tribunal had dismissed unauthorized golf course appeals filed by the same Law Firm.

**Minnesota**

**Health Care REIT, Inc. v. County of Anoka, File No. 02/CV-23-2058 (Minnesota Tax Court, Judge Tien, March 22, 2024), https://mn.gov/tax-court/search**, search judge.

**Facts:** Taxpayer filed an appeal by out-of-state counsel for income-producing apartment building challenging market value and uniformity. Minnesota law requires mandatory disclosure by August 1 (unless unavailable or the taxpayer is unaware of the requirement, in which case an additional 30-days is permitted) for all "income-producing" property of: a year-end financial statement for "year prior to assessment date"; "year-end financial statement for the assessment year"; a rent roll "on or near" assessment date (with tenant name, lease dates, base rental, square footage leased, vacant space); "identification of all lease agreements not disclosed on the rent roll" (with tenant name, lease dates, base rental, square footage leased); total net rentable area; and "anticipated income and expenses in the form of a proposed budget for the year subsequent to the assessment date". The Taxpayer complied with the first two by arguably not with the remaining four.

**Issue:** Whether the taxpayer complied with the mandatory disclosure rule.

**Decision:** Failure to comply with mandatory disclosure requires dismissal.

- Relevant decisional authority interpreting this rule:
  - ✓ This rule provides "an extraordinary remedy unlike our traditional rules of discovery" and represents "an affirmative statutory requirement".
  - ✓ Consequently, a petitioner may NOT
    - ➢ "decline to provide information", or
    - ➢ "provide incomplete information and [thereby] shift the burden to the county to conduct further discovery concerning its accuracy or completeness", or
    - ➢ rely on disclosure from third parties".
    - ➢ The failure to disclose need not "cause actual prejudice".
- The disclosures were deficient.
  - ✓ The rent roll fails to identify a Second Amended and Restated Master Lease Agreement and additional lease payments thereunder obtained through the County's own independent investigation.
  - ✓ "The disclosure does not include the actual base rent and percentage rent with respect to the Master Lease, and the basis for the computation".
  - ✓ Nor does the disclosure "include the net rentable square footage" or the "anticipated income and expenses in the form of a proposed budget".
- The actions of taxpayer's counsel were inappropriate
  - ✓ No presentation was offered in opposition to the Motion to Dismiss.

- ✓ "This matter marks the third time that [counsel] has failed to appear in a matter set for trial or dispositive motion before [this court]" and another occasion before another tax court judge.
- ✓ County Counsel "averred that [counsel] failed to respond to his attempts at contact" here and "this pattern of non-communication with [counsel] was an 'ongoing problem' " ("we have had a few matters with him over the years . . . [without] response"; he has "so frequently not responded to us").
- ✓ "Such behavior wastes the time as well as human and financial resources of opposing counsel, court personnel, and the court reporter . . . As an unequivocal reminder to practitioners, counsel who have entered an appearance pro hac vice are expected to fulfill their professional obligations toward client, opposing counsel, and the court."

**TLC Education Foundation v. County of Hennepin, File No. 27-CV-22-6925 (Minnesota Tax Court, Judge Tien, May 14, 2024),** **https://mn.gov/tax-court/search**, search judge.

**Facts:** IRS 501 (c)(3) non-profit entity filed an appeal contesting fair market valuation and requesting exemption appeared before the regular division of the Tax Court by its non-attorney board chair. The Court ordered it to obtain counsel in order to proceed to trial.

**Decision:** The petition was dismissed with prejudice for failure to obtain representation.

- The taxpayer was given three separate opportunities to remedy the situation.
  - ✓ "TLC did not appear for trial as scheduled on January 2, 2024, and, because of a possible miscommunication. . . the Court rescheduled trial for January 30, 2024, and then continued trial once more to February 27, 2024."
  - ✓ "On February 27, 2024, the parties appeared . . . [and] Dr. Childs represented that TLC had not retained counsel due to the prohibitive cost, and that he intended to represent TLC, despite the court's order. This time, the court continued trial to May 7, 2024, and in the process informed Dr. Childs of the availability of pro bono/low bono resources".
  - ✓ On May 7, 2024, "Dr. Childs represented that, due to competing commitments, TLC still had not retained counsel".
- Dismissal with prejudice is the appropriate remedy.
  - ✓ Minnesota law permits non-attorney tac court representation *pro se*, or by a general partner, sole shareholder of a corporation or single member of a limited liability corporation, none of which apply to TLC.
  - ✓ "TLC disregarded two prior court order of this court explicitly directing it to secure representation by counsel, and that delay was unreasonable and inexcusable under the circumstances; and that TLC's delay has prejudiced the County and is not likely to be remedied by further continuance."

**Oregon**

**Constantino v. Washington County Assessor, TC-MD-230442N (Oregon Tax Court, Magistrate Division, Magistrate Boomer, June 11, 2024),**
**https://www.courts.oregon.gov/publications/tax/Pages/tax-magistrate.aspx**

**Facts:** Taxpayer purchased her home in 2019. She contested assessments for tax years 2020-2021 through 2023-2024 based upon square footage listing at 2,288 when the correct size was 1,811. She only discovered the error on October 23, 2023 while preparing her 2023-2024 uniformity appeal. The Assessor corrected 2023-2024 "but declined to make a correction for any earlier years because 'there is no statutory authority which allows for the relief plaintiff seeks."

**Issue:** The Court "construe[d] the parties' filings as cross motions for summary judgment" on whether the Assessor has statutory power to correct the earlier years.

**Decision:** No, despite three possible statutory avenues.

- Under one statute, prior to 2023, square footage errors could be changed for "the current tax year". An amendment permitted such corrections "for up to five tax years immediately prior to the current year" but from and after "property tax years beginning on or after July 1, 2024".
- Another statute offers redress to "correct clerical error" or permit an appeal if an Assessor makes a correction that increases an assessment.
  - ✓ The former does not apply "because on error in square footage is not a clerical error but rather one of valuation judgment" (along with "a variety of factors including construction quality and design, finishes and materials, location, depreciation, and market conditions").
  - ✓ The latter does not apply since the Assessor made no "correction".
- A third statute permits residential appeals for the current and preceding two tax years in two circumstances--where an error increases the real market value by 20% or with "good and sufficient cause for failing to timely appeal".
  - ✓ The square footage differential exceeded 20%. But, the taxpayer "did not allege that the error translated into a 20% reduction in real market value".
  - ✓ The "good cause" exception means "an extraordinary circumstance that is beyond the control of the taxpayer"; it "does not include inadvertence, oversight, lack of knowledge, hardship or reliance on misleading information provided by any person except an authorized tax official."

**Vasquez v. Washington County Assessor, TC-MD-240109N (Or. Tax Court, Magistrate Boomer, July 25, 2024), https://www.courts.oregon.gov/publications/tax/Pages/tax-magistrate.aspx**

**Facts:** The taxpayer appealed its 2023-2024 assessment for a single-family home that had been raised after a swimming pool was installed. The Assessor requested a site inspection to ascertain "the entire [fair market] value of the subject". The owners permitted "an external examination of the pool but did not grant Defendant entry into the home to inspect the interior" on the grounds that an interior inspection was "irrelevant" and they were willing to stipulate to a "total real market value of $567,800, challenging only the exception value" of $623,250 reflecting the added value of the pool. The Assessor maintained that it was "substantially disadvantaged" by the refusal of entry.

**Interior Inspection Ordered:**

- "Discovery is part of the 'adversarial process". When taxpayers deny inspections "that forecloses the court's ability to determine the correct value of the property . . . Thus, an inspection . . . is generally permitted where real market value is at issue."
- Taxpayer arguments were rejected: No statute supports appeals based on the exception value only. Next, appeals may be based on the improvements only but these improvements include both the house and the pool. Third, a 2011 statutory amendment states that "any other party to the appeal may seek a determination from the body or tribunal of the total real market value. . . of any or all of the other components of the tax account." Finally, the parties made no stipulation.
- "[A] full interior inspection is likely to yield relevant evidence of the subject property's 2023-2024 real market value, and ultimately allows the court to determine and increase in value due to new improvements."

**Texas**

**Parkwood 121 Village, LP v. Collin Central Appraisal District (Court of Appeals of Texas, Dallas (5th Dist.), Justice Breedlove, February 24, 2024), 2024 WL 748397, 599 S.W.3d 57, and https://law.justia.com/cases/texas/fifth-court-of-appeals/2024/05-23-00270-cv.html.**

**Facts:** On December 20, 2014, Taxpayer and Appraisal District entered into a written Agreement concerning the change of use of a parcel from "qualified open-space agricultural land to commercial development", making it "no longer eligible for qualified open-space land assessment". The Agreement provided in part:

> The district and owner or authorized agent whose signature appear below have met and agreed to the account numbers, years, acreages and effective change of use date listed above and on the attached, to which a change of use determination applies pursuant to [two cited sections] of the Texas Property Tax Code . . .
>
> The parties acknowledge that all complaints or formal protests with respect to the change of use determination herein above have been settled to their satisfaction, and hereby waive any further complaint and/or withdraw any protest, and waive any right to any further relief in this matter

The Appraisal District then assessed additional for tax year 2014. Taxpayer appealed that new valuation. The Trial Court granted the District Summary Judgment.

**Issue:** Did the Agreement bar the Taxpayer from filing an appeal challenging the substantive determination of market value for the subject?

**Decision:** No. Trial Court reversed and case remanded for hearing.

- "The Agreement does not contain any language indicating that Parkwood agreed to a valuation of the property during the relevant tax year or that it intended to waive its right to challenge the district's valuation."
- It specifically only lists "account numbers, years, acreages and effective change of use date" as the items upon which the parties agreed.
- There is nothing "that would limit Parkwood's ability to challenge. . . valuation of the property in any year; it only reflects the parties' agreement on the year in which the change of use occurred."

**The Duncan House Charitable Corporation v. Harris County Appraisal District, 66 Tex. Sup. Ct. J. 1587, 676 S.W.3d 653 (Memorandum, Per Curiam, September 1, 2023), https://casetext.com/case/the-duncan-house-charitable-corp-v-harris-cnty-appraisal-dist-1 .**

**Facts:** Charitable corporation applied for a 50% 2017-year historic home exemption on which was denied and from which judicial review was taken. Meanwhile, the deadline to apply for the 2018 exemption passed. So, the Taxpayer protested the 2018 appraisal value since the district had not applied the exemption. After review board denial, the Taxpayer amended its trial court petition challenging denial of the 2018 exemption. The Trial Court dismissed the case for lack of jurisdiction for failure to timely apply for the exemption in 2018 from which the Taxpayer took an interlocutory appeal. That was also denied.

**Issue:** Did the failure to timely file for the 2018 exemption preclude the Appraisal Review Board and the Trial Court from considering eligibility for the exemption.

**Decision: No.** Trial reversed and case remanded.

- "The issue of whether Duncan House is entitled to the 2017 exemption remains pending in the trial court."
- "If the courts ultimately conclude that Duncan House did not qualify for the exemption in 2017, Duncan House's failure to timely apply for the 2018 exemption will preclude it from receiving the exemption for 2018."
- "But if the courts ultimately allow the exemption for 2017, Duncan House will then be entitled to the exemption for all "subsequent years"—including 2018—even if not timely "claimed," unless and until the chief appraiser gives written notice requiring a subsequent application.

**Addendum:**
**An often-overlooked pitfall: The devasting impact of a "judicial admission".**

**Texas**

**Mansion Partners, Ltd. v. Harris County Appraisal District (Court of Appeals of Texas, Houston (1st Dist.), Justice Rivas-Molloy, December 28, 2023), 2023 W.L. 8938405, 5 and https://casetext.com/case/mansion-partners-ltd-harris-cnty-appraisal-district-3.**

> Mansion Partners argues that . . . [it] did not judicially admit "any fact undermining its right to maintain this lawsuit or appeal" . . . [Further] that the "statement in its petition, that it desired to file its petition within the span permitted by the Texas Tax Code but did not do so, is not clearly and unequivocally an admission" [of its] "inability to seek judicial relief, or (without limitation) a waiver of the right to insist that [HCAD and the ARB] prove proper noticing of the Orders Determining Protest." [Taxpayer] states that its statements in the petition "should be construed merely to assert what already is beyond cavil, that [Mansion Partners] did not file a tax year 2019 petition for review within sixty days of August 12, 2019."
>
> A judicial admission is a clear, deliberate, and unequivocal assertion of fact which conclusively disproves a right of recovery or a defense and makes the introduction of other evidence on an issue unnecessary. In re Estate of Guerrero, 465 S.W.3d 693, 705) (Tex. App.-Houston [14th Dist.] 2015, pet. denied); see also Holy Cross Church of God v Wolf, 44 S.W.3d 3d 562, 568 (Tex. 2001) (stating

"judicial admission . . . bars the admitting party from later disputing the admitted fact"). This rule is based on the public policy that it would be unjust to permit a party to recover after he has sworn himself out of court by a clear, unequivocal statement. Guerrero, 465 S.W.3d at 705. To constitute a judicial admission, the statement must be (1) made in the course of a judicial proceeding; (2) contrary to a fact essential for the party's recovery or defense; (3) deliberate, clear, and unequivocal; (4) in accordance with public policy if given conclusive effect; and (5) consistent with the opposing party's theory of recovery. Id. at 705-06.

In its petition for judicial review, Mansion Partners stated that it "desired to file this appeal within the span of time which is permitted by the Texas Tax Code *but did not do so*." (emphasis added). Mansion Partners' admission of its failure to file its petition for review "within the span of time which is permitted by the Texas Tax Code" is contrary to a fact essential for [its] recovery and consistent with HCAD's argument that the district court lacked subject matter jurisdiction over Mansion Partners' petition because an untimely petition deprives a district court of jurisdiction [citation omitted] . . .

The application of the judicial admission doctrine in this case is also consistent with the public policy of the Tax Code, which aims to balance property owners' rights to contest tax appraisals with the need to achieve finality in appraisal rolls [citations omitted] . . .

We thus hold Mansion Partners judicially admitted that its petition for review was not filed "within the span of time which is permitted by the Texas Tax Code," and that HCAD was entitled to rely on the judicial admission in meeting its burden to establish that Mansion Partners' petition was untimely [citation omitted].

**Illinois**

"Judicial admissions are defined as deliberate, clear, unequivocal statements by a party about a concrete fact within the party's knowledge." Smith v. Pavlovich, 394 Ill. App. 3d 458, 468, 914 N.E.2d 1258 (5th Dist. 2009). They include statements made by a party or counsel in pleadings, court-filed documents, testimony, and argument. *Id.;* Dremco Inc. v. Hartz Construction Co., 261 Ill.App.3d 531, 536 (1st Dist. 1994*);* Rosbottom v. Hensley, 61 Ill.App.2d 198, 215 (4th Dist. 1965). Judicial admissions "have the effect of withdrawing a fact from issue and dispensing wholly with the need of proof of the fact." Konstant

Products, Inc. v. Liberty Mut. Fire Ins. *Co.*, 401 Ill. App. 3d 83, 86 (1st Dist. 2010). If an admission is "clear, unequivocal, and uniquely within the party's personal knowledge", it is binding. Serrano v. Rotman, 406 Ill. App. 3d 900, 907 (1st Dist. 2011); Williams Nationalease. v. Motter, 271 Ill. App. 3d 594, 596 (4th Dist. 1994).

Attorneys are the agents of their clients "for the purpose of making admissions in all matters relating to the progress and trial of an action." Lowe v. Kang, 167 Ill. App. 3d 772, 775, 776, 780 (4th Dist. 1988). So, judicial admissions by counsel are binding. People v. Concordia Insurance Co., 350 Ill.365, 374-375, 183 N.E. 241 (1932) ("admissions made by the appellee's attorneys at the [personal property tax] hearings").

Similarly, evidence submitted to governmental authorities by taxpayers or their representatives in lower level administrative or quasi-judicial proceedings may constitute binding judicial admissions. See *e.g.* In re Application of Rosewell v. Ford Motor Company, 131 Ill. 2d 541, 555 (1989). The Court noted:

> "[O]nly one year prior to the assessment in question, Ford itself estimated the value of the property . . . [for] an amount slightly greater than its assessed value. There is nothing in the record to indicate the property declined substantially in value between 1980 and 1981. Therefore, unless we assume that [the taxpayer] prepared and submitted to the assessor an appraisal which was not the product of its honest judgment, we must conclude that, in appraising the same property only one year later, the assessor might also have honestly judged the property to be worth approximately [that same amount].

The Court also cited The People of the State of Illinois v. The Process Corporation, 377 Ill.65, 67 (1941). That case involved the personal property valuation of an Illinois greeting card manufacturer. In upholding the assessment, the Court observed:

> "If we take the valuations given by him in his testimony in this case the property was assessed at considerably more than, in his opinion, was its fair value. If, however, we take the valuations placed by him in appellant's income tax return, shortly before April 1, 1937, the full value of the property as fixed by the assessing officer was substantially less than, in the opinion of the witness at that time, it was worth. With no other proof in the record no one could seriously contend that this brings the case within the rule so often applied by this court where it is alleged that an overvaluation standing alone constitutes fraud."

## PROCEDURAL AND SUBSTANTIVE

**Arizona**

**A & P Ranch, Ltd. v. Coshise County, Docket No. TX 2022-000423 (Tax Court of Arizona, Judge Agne, June 18, 2024), https://casetext.com/case/a-p/ranch-ltd-v.cochise-cnty**

**Facts:** The taxpayers appealed the 2023 valuation of their agricultural property which includes both nut orchards and vineyards. The nut orchards were increased 2% over the 2022 full cash value; the vineyards 8%. The parties filed cross motions for Summary Judgment based on their views of the relevant facts and the applicability of valuation theories and requirements as prescribed by the Arizona Constitution, statutes, and Department of Revenue Manuals.

**Conflicting approaches**

- Taxing authorities
  - ✓ Assessor's methodology
    - ➢ Uses leases of irrigated lands and the Department's statutory capitalization rate to determine the statutory value of the land.
    - ➢ Uses a sales comparison method for the fair market value of the improvements on the land.
    - ➢ Orchard valuation
      - ▪ Tree value $12,000/acre added to land value of $1,800/acre
    - ➢ Vineyard valuation
      - ▪ Vine value $8,000/acre added to land value of $1,800/acre and to the value of any improvements or structures
  - ✓ County
    - ➢ "Orchards trees and grapevines on agricultural land are distinct from the land and have a distinct value."
    - ➢ Department Manual: "Permanent crops are considered to be improvements and are not valued using the statutory formula prescribed for the valuation or agricultural land."
      - ▪ "[T]his method of valuing permanent crops separately from agricultural land" has been used "for decades".
      - ▪ The earliest Department Manual from 1983 and the most recent from 2022 treat permanent crops as improvements.
    - ➢ By statute, "full cash value is derived from standard appraisal methods and techniques of a statutory method is nor prescribed."
    - ➢ The taxpayer has not overcome the presumption of correctness.
    - ➢ The taxpayer is trying to use the appeal process to gain exemption.

- ✓ Department
  - ➢ "[T]his method of valuing permanent crops separately from agricultural land" has been used "for decades".
  - ➢ Orchard trees and vineyards are not exempt from the Arizona constitutional provision that all property not exempt is subject to taxation.

- Taxpayer
  - ✓ By statute, "land that is used for agricultural purposes shall be valued using only the income approach to value without any allowance for urban or market influences."
    - ➢ The addition of $12,000/acre in 2023 and $600/acre in previous years to the nut orchards was improper.
    - ➢ The addition of $8,000/acre in 2023 and $100/acre in previous years to the vineyards was improper.
    - ➢ "[T]hese determinations are based on market influences and violate" this statute.
    - ➢ Since the full cash value exceeds that permitted by the statute the taxpayer has overcome the presumption of correctness.
  - ✓ No Arizona statute "suggests different treatment of agricultural land based on different crops".

**Decision:** Taxpayer's motion for Summary Judgment granted; County and Department motions denied.

- "The existence of a lang-standing administrative practice does *not ipso* facto bar relief to a taxpayer".
- "The plain language of the statute does not provide for different treatment of agricultural lands based on different crops".
  - ✓ "Tax statutes are to be construed liberally in favor of the taxpayer and strictly against the government" (court decisions).
  - ✓ "The court shall decide all questions of law without regard deference to any determination by the department" (statute).
  - ✓ "[It] does not countenance valuation of 'permanent crops' separate from the land", and even if it results in an "undervaluation" it "is not escaping taxation".
  - ✓ Arizona Constitution provision that "all taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax" is consistent with the finding that the statute "does not allow for a distinction if the crop grown on the agricultural land is a tree or a vine."

**Illinois**

**Shawnee Community Unit School District No. 84 v. Illinois Property Tax Appeal Board and Grand Tower Energy Center, LLC, 2022 IL App (5th) 190266**.

**Background and context:** Ameren Corporation, a public utility company which owned the property through 2013, had stipulated with the School District to an assessed valuation of 33,445,837. That value was based on 33.3% of retrospective appraisal valuations of $94,994,714 and $95,339,314, to which 50% of the improvement was determined by agreement of several experts to be taxable real estate and 50% nontaxable personal property. In January 2014, Rockland Corporation, through affiliate Main Line Generation LLC, purchased this property along with two other power plants in Elgin and Gibson City for $168,000,000 in a portfolio sale, allocating $47,000,000 here. All rights and obligations were transferred to Grand Tower under an assignment and assumption agreement.

**Procedural Issue:** This case initially addressed a significant procedural issue which allows an "exclusive election of remedies" by a taxpayer, and in under certain circumstances a taxing body, that is dissatisfied by a decision of the county board of review to a *de novo* appeal to either the State Property Tax Appeal Board (PTAB) or to the local county circuit court (under the tax objection statute). Here, a school district sought dismissal of the case alleging that taxpayer failure to timely pay all bills due and owing, leading to a foreclosure of the tax lien and a judgment and order for a tax sale, divested PTAB of jurisdiction. The Appellate Court, in a detailed analysis of the various enabling statutes, administrative rules, and reviewing court authority, found that the PTAB "did not err as a matter of law" when it denied the school board's motion to dismiss. For further discussion, see ¶¶11-14, 34, 38-39, 42-69.] This issue was of monumental significance in terms of the tax dollars at stake to the taxpayer, the financial interests of the taxing bodies, the interpretation of the two statutes implicated, and a taxpayer's right to seek an election of remedies.

**Substantive Valuation Issues:**

- Grand Tower power generation facility on the western bank of the Mississippi River sitting on 336.32 acres appealed 2014 and 2105 real estate tax assessment fair market value of $31,538,245. Converted from coal-fired power plant into a combined cycle gas turbine plant (CCGT) in the 1950s, with reconfigurations in 2001, it includes two combustion turbines (CT), which convert natural gas to electrical energy, two steam turbines (ST) that convert steam to electrical energy, and heat recovery system generators (HRSG) that convert heat from the CTs into steam to power the steam turbines. The property also contains electrical and mechanical equipment, transformers and substations, as well as a variety of buildings, foundations, platforms, piping, structures, and fire protection systems.

- Huge expert witness appraisal gap:
  - ✓ Taxpayer market value: $20,000,000
    - ➢ As an intermediate or base-loan facility nature it was less profitable and highly inefficient due to its hybrid design. In addition, prior ownership had "engaged in substandard maintenance practices which led to longer start times and maintenance related issues which prevented the plant from operating at its full capabilities" which Grand Tower "took steps" to alleviate and correct.
    - ➢ Cost approach: $14,000,000
    - ➢ Income Approach: $20,000,000 (placed most reliance)
    - ➢ Sales Comparison Approach: $35,210,000
  - ✓ School District market value: $220,000,000 (2014); $200,000,000 (2015)
    - ➢ Cost Approach (2014): $185,600,000; (2015): $202,824,000
    - ➢ Income Approach (2014): $231,220,000; (2015): $198,821,000
    - ➢ Sales Comparison Approach (2014-5): $186,390,000-$271,890,000
- Allocated value of $47,000,000; $168,000,000 portfolio sale of three power plants "after a competitive two-step auction process, as is typical in the industry"
- Legal principles for administrative review of decisions of tribunals or agencies charged by law with the interpretation and application of their enabling statutes and having specialized experience, expertise, or knowledge of a technical area.
  - ✓ Determinations on issues of fact are "*prima facie* true and correct" and not overturned unless they are against the "manifest weight of the evidence".
    - ➢ "*Prima facie*": factual determinations are presumed acceptable, correct, sufficient, true or valid unless disproved, refuted or proven otherwise. The findings are adequate "on the face of it". Reviewing courts extend deference to specialized agencies, especially if evidence is conflicting and witness credibility must be weighed.
    - ➢ "Manifest weight of the evidence": The decision is not obviously erroneous or unsupported by evidence or an opposite conclusion is not clearly evident. It is a deferential standard of review. The decision is not wrong on its face or without support in the record.
  - ✓ Administrative agency "has broad discretion in the conduct of its hearings, and . . . abuses its discretion only when 'no reasonable person would take the position [it] adopted' or it has 'act[ed] arbitrarily, fail[ed] to employ conscientious judgment, [or] ignore[d] recognized principles of law.' "
  - ✓ Courts "are not charged with the responsibility of determining the market value of the property. Rather, the central question before us is whether the PTAB's decision to reduce the petitioner's assessments was correct."
  - ✓ "This court is 'not required to delve into the minutiae of expert testimony or make credibility determinations appropriately left for the trier of fact.'"

- PTAB issued an 83-page opinion, providing a detailed review of both appraisals. It gave little weight on the portfolio allocation. It reconciled inconsistencies raised by cross-examination of the witnesses, and considering all of the evidence, found that the Taxpayer's appraisal was "more persuasive". PTAB's lowering of the valuation to $20,000,000 was upheld. "Because there is evidence supporting the PTAB finding" the decision was not against the manifest weight of the evidence.

The Illinois Supreme Court granted petition for leave to appeal Sept. 28, 2022 (Docket No. 128731). It heard the case Sept. 20, 2023. Comprehensive, wide-ranging, and scholarly briefs were filed by all the parties and *amicus curiae* Illinois Association of School Boards, Illinois Association of School Administrators and the Civic Federation of Chicago. The 1,350 or so pages of briefs, appendices, legislative transcripts, and supplementary supporting materials, along with the oral argument audio and video, are posted on the Supreme Court website. https://www.illinoiscourts.gov/courts/supreme-court/docket/; https://www.illinoiscourts.gov/courts/supreme-court/oraloargument-audio-and-video/.

**Shawnee Community Unit School District No. 84, et al. v. Illinois Property Tax Appeal Board, 2024 IL 12873 (Illinois Supreme Court, May 23, 2024, 5-2 decision), affirming the Appellate Court.** This decision now stands among the most significant in Illinois history.

**What was at stake:** The 2014 unpaid taxes initially owed were $2,557,423.91 with a similar amount for 2015. The Circuit Court of Jackson County entered judgment on the taxes and ordered a tax sale. An unrelated party purchased both tax years. In the meantime, Grand Tower did timely file appeals for those years before PTAB, and the cases were then consolidated. Next, Grand Tower redeemed the taxes, paying additionally all statutory penalties and interest, as required by law. The assessed value certified by the county board of review for each year had been slightly reduced to 31,538,245. The PTAB substantive decision reduced that value by about 89.4% to 3,333,000 ($20,000,000 at 33 .3% of fair market value with the 50%/50% allocation for real and personal property).

**The underlying fair market valuation determination was not contested.** "In this Court, the School District does not challenge the appellate court's judgment affirming the PTAB's reduction of the assessments [determining fair cash value] for the 2014 and 2015 tax years. Instead, the School District contends only that the appellate court erred in affirming the PTAB's denial of the School District's motion to dismiss" (¶18).

**Issue for review: "**Whether PTAB erred when it concluded that the Property Tax Code does not require a taxpayer to pay the disputed property tax, under protest or otherwise, as a condition to maintaining an appeal to PTAB" (¶¶ 20, 20 n.2, 31-32, 33, 38-39, 40). See also the Appellate Court analysis of this issue. 2022 IL App (5th) 190266, ¶¶ 45-58.

- "According to the School District, timely payment of the taxes is a condition precedent to pursuing an appeal before the PTAB. We disagree." (¶20).
- "Nothing in section 16-160 requires payment of the disputed property taxes in order to pursue an appeal of an assessment before the PTAB" (¶23).
    - ✓ "[I]n almost every instance, the taxpayer must initiate an appeal with the PTAB *before* the actual tax payments are due for the tax year in question." "It would be unreasonable to conclude that the legislature made paying disputed property taxes a condition precedent to pursing an appeal before the PTAB when, at the time of initiating the appeal, the taxpayer has not yet even received a property tax bill (¶24) [emphasis in original]."
- "The two options for challenging an assessment—an appeal to the PTAB and the filing of a tax objection complaint—are mutually exclusive" (¶28).
- "[T]he pendency of a PTAB appeal does not stay the enforcement of the Code's provisions regarding tax collection and enforcement" (¶39).
    - ✓ "[T]he existence of a PTAB appeal does not prevent or delay a county collector's application for judgment and order of sale" (¶36).
    - ✓ "[T]he taxpayer need not pay the property taxes to *initiate* an appeal" (¶38) [emphasis in original].
- "The PTAB acquired jurisdiction to review [these] property tax assessments when Grand Tower timely filed its petitions pursuant to section 16-160 . . . No other jurisdictional step was required" (¶43).
    - ✓ No statutory provision "state[s] that the PTAB is divested of its jurisdiction to consider a properly filed, pending appeal once the county collector files a subsequent application for judgment and order of sale" (¶44).
    - ✓ By virtue of the 1994-1995 amendments to the Property Tax Code (¶¶50-52) removing such statutory authority and case law, "a circuit court does not have authority to review the correctness of a contested assessment when the collector makes an application for judgment and order of sale. That occurs in an entirely separate proceeding either in a tax objection complaint or in an appeal to the PTAB" (¶51), but not in a tax sale.
    - ✓ "A judgment and order of sale conclusively establishes that the property taxes are delinquent and are to be sold at the tax sale. However, entry of that judgment does not estop a taxpayer . . . from pursing a property filed appeal challenging an assessment before the PTAB" (¶54).

**Impact of the decision:** By affirming the denial of the Motion to Dismiss, which had rejected the School District's condition precedent, jurisdiction, estoppel, and related arguments, PTAB's market value decision reducing the assessment nearly 90% remained.

## SUBSTANTIVE

### Arizona

**Mesquite Power, LLC v. Arizona Department of Revenue, No. CV-23-0016-PR (Arizona Supreme Court, Justice King, July 22, 2024), rev., rem. and vacating 254 Ariz. 355, 523 P.3d 960 (App. 2022). For Arizona Supreme Court Oral Argument Case Summary see, https://www.azcourts.gov/LinkClick.aspx?fileticket=3TMmsoG102k%3D&portalid=45. The case is not yet published in the official reports. For the opinion, see the following: https://www.azcourts.gov/opinions/SearchOptionsMemoDecs.aspx?year=2024&court=999; and https://caselaw.findlaw/court/az-supreme-court/116394422.html.**

**Facts:** Mesquite Power Plant is a 625 megawatt "base load" electric power generation facility which is designed to run continuously, absent shutdown or maintenance. It is also a "merchant plant", meaning that Mesquite sells electricity to third parties. Originally constructed in 2003 by Sempra U.S. Gas & Power LLC, it was sold in 2015 to ArcLight Capital Partners for about $357,000,000. After expending some $27,000,000 in capital improvements, in 2018 ArcLight sold all rights, titles, and interests in Mesquite's business, including the power plant itself, to Southwest Generation Operating Company, LLC for nearly $556,000,000. Southwest is the current owner and operator.

The sale to Southwest included transfer of the "Power Purchase Agreement" between Mesquite and the Buyers under which Mesquite provides electricity to this "collective group of electric utilities, municipalities, power cooperatives, tribal utility authorities, irrigation districts, electrical districts, as well as other entities authorized to sell power." The Agreement guarantees the Buyers a specific amount of power for fixed mandatory payments. Mesquite is not required to produce sufficient electricity to fulfill those commitments and may purchase additional power on the open market to do so. As the megawatt power guarantees increased (2011: 241; 2013: 271; 2017 for 2021-2045: 475) so did the payments ($34,000,000 plus certain operating costs and then to $48,000,000).

**Underlying legal dispute:** Arizona law requires the cost approach in property tax valuation of electric generation properties in which adjustments are made to a five-year depreciation schedule and assigning "cost of constructing or "acquiring the property in an arm's length transaction" of the land, improvements, and personal property. Applying the statutory criteria, the Arizona Department of Revenue (ADOR) set the value at $196,870,000. The Taxpayer did not attack the application of the formula but instead asserted that the value violated another statute because "the full cash value shall not be greater than market value regardless of the method prescribed" by law. The Tax Court granted Mesquite partial summary judgment finding the Agreement was "a non-taxable, intangible asset" but denied Mesquite's motion "as to whether cash flows attributable to the [Agreement] can be considered as part of the valuation".

**Trial court decision and appellate court reversal:** At trial, Mesquite's expert relied on an income approach based on a hypothetical model to value without regard to the Agreement (giving no weight to the cost and sales comparison approaches) concluding a 2019 market value of $105,000,000. ADOR's expert giving some weight to all three approaches (including income from the Agreement without deducting the value of the Agreement), opined a value of $432,000,000. The Tax Court agreed with Mesquite, but the Court of Appeals reversed: "[W]here intangible assets enhance the real and tangible property's value, a competent appraisal must consider the effect such intangible assets have on the taxable property's value." Any proper valuation must consider "its current usage". The Agreement "enhances the value of Mesquite's taxable property since it contributes to the plant's cash flows and current usage". The Supreme Court granted *de novo* review "because this case presents recurring issues of statewide importance."

**Supreme Court decision:** Failure to consider the income from the Agreement resulted in an improper valuation which did not rebut the ADOR's valuation. "In at least one earlier case involving Mesquite's property, the tax court ruled that the [Agreement] could not be considered. It was therefore entirely understandable that [its] expert did not consider [it] when valuing the property. Mesquite should be given that opportunity now."

- Presumption
  - ✓ ADOR valuations are "presumed lawful and correct".
  - ✓ They may be rebutted by establishing that they are "excessive" when using "standard appraisal methods and techniques" which "are appropriate under the circumstances".
- Approaches to value: Focusing on the Income Approach
  - ✓ Arizona recognizes cost, income, and sales and that sometimes one may be preferred.
  - ✓ Here, ADOR argues the Agreement may be considered under the Income Approach and Mesquite argues it is irrelevant.
  - ✓ Arizona case law holds that underlying encumbrances (mortgages, long-term leases, and unfavorable rentals) do not decrease the market value of a property since "the fee owner's personal financial status is irrelevant".
- The Agreement
  - ✓ "Is an intangible business contract." "If all income. . . is automatically used to calculate the value. . . this would effectively tax an intangible asset and would skew the property valuation away from the property itself."
  - ✓ However, "income generated from [it] is relevant as it may evidence a facility's expected income".
    - ➢ The Plant's core function "is to generate power and sell electricity, and its value under the income approach is closely associated with its ability to generate income from the sale of such electricity.

- "We conclude that income from the [Agreement] may therefore be considered. . . if it constitutes income derivable from the [Plant] itself as a base load power plant."
  - "But we simply cannot say, as a matter of law, that all income generated from an agreement is automatically and entirely irrelevant".
  - The cost approach statutory formula does not preclude the consideration of income when the taxpayer asserts that the ADOR value has exceeded the market value.
  - ADOR has not run afoul of the Arizona statute that requires valuation take into account the "current usage to which the property it put at the time of valuation" as the Agreement does not "alter or restrict the manner in which the [Plant] is used or the activity that occurs on the property.

✓ The Tax Court should consider:

- whether the Agreement is severable;
  - It is: "But these facts do not conclusively demonstrate that [it] is in fact separate and independent from the property itself".
- similar facilities with similar agreements;
- the historic role in generating product under the Agreement;
- this plant's role in generating power as opposed to other sources;
- if comparable plants operate in a similar manner

**Cedar Crest/Flagstaff LP v. Coconino County, Docket No. TX 2020-001134 (Arizona Tax Court, Judge Agne, June 24, 2024), https://casetext.com/case/dedar-flagstaff-lp-cocnino-cnty.**

**Facts:** This three-story, 8-unit 2 and 3-bedroom, one and 1.5-bath LIHTC property was purchased in 2015 for $3,250,000, supported by an appraisal at the same value. Later, that year, ownership applied for a construction loan from U.S. Bank which advanced $1,455,000 at 80% LTV ($1,820,000). Put into service in 2016 so that its LUHTC restrictions will not expire until 2045, it is located at the base of a substantial hill upon which the City of Flagstaff built a maintenance-equipment and construction-materials storage yard that is exempt from restrictions on storm water run-off. As a consequence, on-going erosion to the subject—occasioned by greater than average rainfall and snow in 2018 and 2019—requires replacement reserves of $350.00 per unit for potential equipment, repairs, maintenance, snow removal, and the like.

**Governing Arizona case law:**

- LIHTC valuation requires consideration of "deed restrictions" and "market value limitations, and higher than typical expenses. These factors include: the LIHTC agreement (LURA), Internal Revenue Service and Arizona Department of Housing regulations, rent restrictions, funding of construction by combination of the sale of tax credits and third-party debt, mandated reporting and record-keeping, and internal and external auditing by governmental and non-governmental entities.
- The valuation must reflect the current usage of the property as LIHTC.

**Trial Court appraisal witness evidence and testimony:**

- **Assessor valuation**
  - ✓ Employed a mass appraisal model to develop a "modified cost approach" for 2022 -2022 which is replacement cost plus an "adjustment" based on sales of three market rate apartment complexes in Flagstaff.
  - ✓ Did not take LIHTC rent, tenant or other restrictions into account.
  - ✓ Admitted 2021 and 2022 valuations-- $3,709,998 and 3,895,498 excessive.
  - ✓ The 2018 and 2019 valuation had been settled at $3,737,853 which was applied to 2020 as a "roll over valuation".
- **Taxing body appraised valuation**
  - ✓ 2015 construction financing: $5,530,000 "as is"; $3,680,000 stabilized (The Bank rejected it, lending $1,455,000 based on 80% LTV of $1,820,000.).
  - ✓ 2017, 2020, 2021, 2022 for ad valorem varying amounts, including $3,680,000, $6,100,000, and $5,500,000
  - ✓ Income approach
    - ➢ Although believing expenses for advertising, management, payroll, and maintenance and repair were "high", sought no explanation from the owner. Rather, he relied on four comparable properties for expenses but did not retain the source data, merely exporting the information into a spreadsheet.
      - For tax year, $233,000 lower than actual project expenses for 2019 and $96,000 lower than 2018.
      - Tax year 2022, $138,000, $185,000, and $48,000 lower than the actual expenses for the preceding three years.
      - 1st comparable: claimed $30,000 in R&M for 2019, when actually, $45,000 was expended in only the first 5 months
      - 2nd comparable: no supporting data in file
      - 3rd comparable: labeled "confidential" was inadmissible
      - 4th comparable: reported as 224-unit complex, it has three separate buildings (80, 72, and 72 units), operating under

separate ownership; used each expense category from only one of the three and divided that amount by 244
(Except for the last, which is not a LIHTC project, these were used for both the 2021 and 2022 tax year opinions of value)

- Cap rate analysis
  - Market participant interviews "to support his preconceived notion that the capitalization rate for a LIHTC property is the same as a market rate property."
  - Disregarded broker who "told him that LIHTC capitalization rates were higher. . . because it was inconsistent with his experience, which was merely derived from other interviews of brokers, not from actual experience."
  - Did no independent analysis.
  - REAC and CoStar data from 3rd quarter of 2021 were not competent for January 1, 2020 valuation.
  - REAC 3rd quarter of 2021 not competent for January 1 2021.
  - PWC data is derived from insurance company and pension fund investors "who do not buy single LIHTC properties of less than 100 units in a market like Flagstaff."
  - Disregarded CBRE Affordable Housing Investor Survey and RealtyRates.com, both indicating higher LIHTC rates.
  - Although he used what proved to be flawed expense data from the LIHTC in Coconino County, he did not consider the cap rate generated by that sale.
  - The effective tax rate used was lower than the actual rate.

- ✓ Sales comparison approach
  - He "did no analysis of the comparability of the sales, including location, unit size, whether they were LIHTC sales or not or any other measure of adjustment that is required".
  - The range per unit was $57,971 to $160,000. When post-lien data dales are eliminated, those remaining had over $159,000/unit.
  - The only LIHTC sale was the one in Coconino County at $57,971.

- **Taxpayer valuation**
  - ✓ 2021: $2,700,000; 2022: $2,860,000
  - ✓ Income Approach
    - Received and reviewed income and expenses from comparable properties as well as historic operating expenses of the subject.
    - Identified the same four categories of "high" expenses and both investigated causes and requested owner explanations
      - Water heater replacement "on a regular basis"

- Bring in a location of “heavier snowfall”, “run-off from” up-hill City property increased maintenance and repair costs
- Many residents have families with children
- Flagstaff ordinance has annual minimum wage increases
- The 10% management fee was typical of 2014 LIHTC project and was raised from 6% due to “increased and complex compliance burden”. He rejected an added 4%.
- Advertising expenses were properly included in “supportive services” as disclosed by both the property’s CPA and the independently-j audited financial statements.

➢ Cap rate analysis
- Three LIHTC sales from across the country (including the Coconino one) based on “a search for market rate sales”.
- Supported “by his prior work that analyzed the effect on value caused by the time remaining” program
- Identified “specific risks created by the LIHTC agreement.
- He used the correct effective tax rate.

✓ Sales comparison approach
➢ Sales of LIHTC properties are difficult to find.
➢ Undertook national search and located four comparable sales (one in Coconino County).

**Trial Court decision:** Taxpayer valuations of 2021 at $2,700,000 and 2022 at $2,860,000

**Michigan**

**Macatawa Bank City of Holland, MOHAR Docket No. 22-001348 (Michigan Tax Tribunal, Judge Abood, March 4, 2024),**
**https://www.michigan.gov./taxtrib/entiretribunal/decisions/accordian/2024/first-quarter-decisions**

**Facts:** This is a 2021 tax appeal of an owner-occupied two-story 14,906 square feet bank building with lobby, branch banking, private banking and corporate training. It also contains a 7,561 square foot lower level with bath, break, conference, mechanical, storage, and training rooms together with a kitchen. It is located on a 1.58-acre corner and landscaped site that includes a parking lot and water fountain. Custom-built in 2006, its “material finish and dedicated spaces” are quite elaborate. These include: “crown molding, wood-framed doorways vertical wood molding, chandelier lighting, ceramic tiled restrooms, circular recessed ceiling murals, [and] fireplaces”. The taxpayer also claimed that the “grandiose” staircase in the middle of the building was a “vertical

penetration" feature that should result in a deduction of square footage from usable GBA. The Taxpayer sought a value of $3,000,000; the taxing body $4,500,000.

**Tribunal criticisms of appraisal evidence:**

- Cost Approach
  - ✓ Owner
    - ➢ Circular staircase issue not addressed as functional obsolescence.
    - ➢ No land sales
  - ✓ Taxing body
    - ➢ Land analysis "did not include customary elements (demographics, traffic counts, specific zoning, etc.) to support adjustments.
    - ➢ Land sales were all pre-pandemic smaller sites and not adjusted for amenities and characteristics.
  - ✓ Neither: qualitative or quantitative functional or economic obsolescence
- Income Approach: Both appraisers placed minimal weight
  - ✓ Basement/lower level
    - ➢ Owner: No market data, merely broker discussions
    - ➢ Taxing body: No NRA adjustment in comparable grids
  - ✓ Rental rates
    - ➢ Owner: Modified gross but then added reimbursements
    - ➢ Taxing body: Triple net
  - ✓ Expenses
    - ➢ Both: Conflicting lease structures, lease terms, GBA vs. NRA
  - ✓ Cap rate: both loaded
    - ➢ Owner: Greater risk = 10.79
    - ➢ Taxing body: Functioning for intended use = lower risk = 7.40
- Sales Comparison Approach
  - ✓ Owner (NRA): 6 sales—one leased fee condominiums with business going concern; one without a basement; two larger and without parking; one is leased fee that leases space from this owner
  - ✓ Taxing body (GBA): 6 sales—one without demographic data; one 61,728 square feet leased fee and zoning industrial; one has excess land (9.8 acres)

**Tribunal independent valuation based on analysis of two common sales**

- Bracketed the 2021 tax lien date: February 2022 and July 2020
- Owner: adjusted values of $248.54/sf and $250.56/sf
- Taxing body: adjusted value of $237.25/sf and $222.99/sf
- Decision: 14,906 (GBA) x $235/sf = $3,500,000

**SN Management LLC v. City of Trenton, MTT Docket No. 22-001698 (Michigan Tax Tribunal, Judge Enyart, June 28, 2024),**
**https://www.michigan.gov./taxtrib/entiretribunal/decisions/accordian/2024/second-quarter-decisions**

**Facts:** This 51,000 or so 1965-1967 vintage skilled nursing facility, licensed for 120 beds, sits on a 5-acre site. It has 21,286 unused 2nd floor space, dated décor, low ceilings, an inoperable elevator, and needs parking lot and roof repairs. It is an 88% Medicaid facility. Although it has a "five-star" rating with the Centers for Medicare and Medicaid Services, it is a distressed and underperforming asset struggling at 50% (or 30%-40%) occupancy (in a market at 65-80%), insufficient revenues, and high expenses in a submarket having 393 skilled nursing facilities with 19,305 beds. For 2018-2020 comparable properties saw a drop in occupancy from about 86% to 70.8% followed by a rebound in 2021-2022 to about 77%. Conversely, the subject's decline has been more pronounced: 2018 and 2019 from 70% and 87.8% to 55.2% (2020) and 55.2% (2021) and then an uptick to 63.9% in 2022. The subject is adjacent to a hospital and down the street from a newer competitor.

| **Expert evidence** | **Jurisdiction** | **Taxpayer** |
|---|---|---|
| Expert qualifications | MAI, CCIM, ASA Chartered Surveyors | MAI, General licensed in 13 states |
| Experience | 27 years (thousands) 700-800 senior care Facilities (30% Mich.) Tribunal: 21-27 times | 12 years Less Michigan experience |
| Observations re: property difficulties | Poor management Reputation of 1 owner Area demand>supply Owners--78 beds to another facility Declining private pay COVID effect lingers | Poor management Underperforming Financially distressed Negative NOI |
| Condition: | Older Physical, functional, Extern. Obsolescence | Older and $340,000 repairs needed |
| Highest and best use | Continued current | Skilled nursing |
| Cost Approach | Not developed (age) | 3 land sales Marshall and Swift Depreciation Did not use 2nd Fl. or basement FMV = $3,340,00 |

| | | | |
|---|---|---|---|
| Income Approach | | Doubled *pro forma* | Adjusted historical data |
| | | 43,800 patient days | Neg. cash flow, no direct cap. |
| | | Stab. 65% occupancy | Stab. 60% occupancy |
| | | Comp. expenses | Used undisclosed comparable data |
| | | PWC cap = 8.29 | 8.29 |
| | | 2022 cap = 11.3 | 11.33 |
| | | 2023 cap = 12.8 | 12.08 |
| | 2022 | FMV=$3,646,388 | 3,419,444 |
| | 2023 | FMV=$3,419,444 | (No weight in reconciliation) |
| Sales Approach | | (2022) 3 Michigan | 15 sales for distressed properties |
| | | (2023) 5 Michigan | Narrowed down to those < 55% occ. |
| | | Beds: 134, 150, 230, 169, and 231 | |
| | | Values per bed: 48,983, 39,696, 72,764, 41,261, 196,881 (outlier) | |
| | | FMV=44,400/bed | 35,000/Bed for both years |
| Removal of F, F & E (2021) | | FMV=4,604,000 | |
| Removal of F, F & E (2022) | | FMV=4,997,000 | |
| | | 38,367/bed and 41,642/bed | |
| Greatest weight | | Sales | Sales |

**Decision:** Jurisdiction's valuations based on the Sales Comparison Approach

- "Overall. . . [the jurisdiction] valuation is a more reliable indicator of value".
- Taxpayer report utilized "minimal" Michigan information
- "The age of the subject does not result in a meaningful cost approach."
- "Neither party provided sufficient evidence for the Tribunal to rely on any income approach.
- "No weight is given to Petitioner's sales."
  - ✓ Failure to apply market-based adjustment to comparable sales
  - ✓ "Petitioner appears to develop its value conclusion based on a median or unexplained weighed average of more than 10 properties without properly identifying and selecting the most comparable sales."
- "Petitioner failed to rebut the assertion that the drop [in occupancy] was in whole, or part, caused by the existence of a new, competing facility also owed by Petitioner's owner."

**Oregon**

**Lowe's HIW, Inc. v. Marion County Assessor, Docket No. TC-MD-210115R (Oregon Tax Court, Magistrate Division, Magistrate Davis, June 21, 2024), https://www.courts.oregon.gov/publications/tax/Pages/tax-magistrate.aspx.**

**Facts**: The subject is a 135,607 "big box" warehouse built in 2002 on a 13.32-acre site in Salem near the intersection of two highways with a concrete masonry exterior, few interior walls, an outside covered garden area, and a 558-space parking lot. As a built to suit property it is operating under a long-term lease. The Assessor valued the property at $13,426,510 for tax year 2020-2021. The Magistrate was "not persuaded by either party's evidence because the comparable sales selections and, at time, lack of adjustments do not reflect the market evidence" and thus the Taxpayer failed to meet its burden of proof.

| **Expert evidence** | **Taxpayer** | **Assessor** |
|---|---|---|
| Expert qualifications | MAI | Oregon state certified |
| | General | Senior commercial for Assessor |
| Experience | 20 years | 31 years/8 years respectively |
| Observations | Area job growth 25 year high | Stable market area for large single tenant retail uses |
| Condition: | No physical issues | Good |
| Highest and best use | As Vacant | HBU: single tenant retail |
| | As Improved | |
| | Continued current | |
| Cost Approach | Rejected based on age/lack of market depreciation data | 4 land sales<br>Marshall and Swift/age depreciation<br>FMV = $14,806,030 |
| Income Approach (sf/rental/adjusted) | 6 leases 2018-2020 | 6 leases—sizes/dates not in opinion |
| | 96,296, $9.72, 10.11 | $6.62 (Home Depot) |
| | 47,451, $8.25, 8.25 | $8.00 (Costal Farm and Ranch) |
| | 106238, $7.00, 7.07 | $8.40 (Hobby Lobby) |
| | 85,160, $9.48, 9.67 | $9.72 (Shun Fat Market) |
| | 85,160, $10.36, 10.67 | $8.97 (McClendon Hardware) |
| | 34,389, $9.50, 9.50 | $8.49 (Lowe's) |
| | Type: no national credit tenants | Overall average: $8.37; Salem average: $7.88 |
| | Conclude: $9.75 | $8.00 |
| | Triple net with a 5% "slippage" | Base rental plus reimbursements<br>5% vacancy |
| | $502,484 exp. | 30% expenses |
| | Cap rate analysis | Sources not disclosed |

| | | |
|---|---|---|
| | 15 Sales: 6.00-<br>8.05: 7.25<br>Surveys: 4.50-<br>10.00: 6.22<br>Band: 6.17 | |
| | Used 7.25 (sales) | 6.0 |
| | NOI = $1,188,710 | $969,539 |
| | FMV = $16,400,000 | $16,159,000 |
| (lease up costs @ $50/sf) | FMV = $9,620,999 | |
| Sales Approach | 6 sales 2018-2019 | 4 2018-2020; 1 in OR and 3 in WA |
| (sf/value) | 89,64: 74.00 | 107,175: $114.00 (Home Depot) |
| | 136,756: $47.00 | 127.755: $133.00 (Lowe's) |
| | 116,000: $88.00 | 117,573: $128.00 (McClendon) |
| | 131,880: $68.00 | 86,364: $132.00 (McClendon) |
| | 86,479: $94.00 | Note: The first sale was in Salem |
| | 133,958: 50.00 | |
| | Conclude: $70.00 | $116.00 |
| | FMV = $9,490,000 | FMV = 16,023,400 |
| | 2 sales for multi-<br>tenant conversion | |
| Greatest weight | Sales Approach | Income (with Sales very close) |
| Final opinion of value | $9,490,000 | $16,091,200 |
| Overall approach | General retail<br>without lease | Home-improvement warehouse<br>with lease |

**Decision:**

- Taxpayer appraisal weaknesses
  - ✓ The cost estimate from two brokers to demise the property was based adjustment in sizes totals $6,780,000 based appears to be unwarranted "stabilization adjustment" since no indication use will not continue.
  - ✓ Properties chosen have long-term leases in place. Oregon case law presumes that property is occupied by a hypothetical entity and immediately available for a new owner of tenant.
    - ➢ A potential buyer or investor of a large, big box building would likely accept a different rate of return in exchange from a long-term national credit tenant. Thus, it is often the lease that gives a major portion of the value to a prospective buyer of a big box and not the physical building itself."
    - ➢ "Plaintiff assumes the property is occupied without a lease, implying it is vacant and values the property as if it were to be demised."

- There was no evidence of declining or transitioning big box stores near the subject property."
- "Plaintiff's perspective does not match the current owner-occupied economically stable condition of the property."

- Assessor appraisal weaknesses:
  - ✓ "Defendant selected properties where long-term leases may impact value but did not examine that impact."
  - ✓ "It valued the subject property as occupied and selected comparable properties including leases with high credit tenants." In this regard, its "method reflects value-in-use, but not necessarily the market's valuation for a hypothetical purchaser, rendering its comparable analysis unreliable."

**Tennessee**

**Sevier County v. Tennessee State Board of Equalization (Tennessee Court of Appeals, Justice McClarty, May 8, 2023), 2023 WL 3298376, https://casetext.com/case/sevier-cnty-tenn-state-bd-of-equalization, Application by Crown Park Resort Owners Association, Inc. for discretionary appeal denied, Docket Nos. 21-4-090 and 21-4-091, Order entered Nov. 20, 2023 (Nov. 20-21 Grant & Denials List)**

**Facts:** Crown Park Resort Owner's Association acts as agent for 109 timeshare owners for paying real estate taxes, utilities, and other expenses. In exchange for relinquishing individual rights to lease their own units, the Association operates through the Holiday Inn Club, which in turn, facilitates unit rentals itself, and with two other third-party online platforms, engages Global Assets Exchange, LLC in a "points-exchange" system typical in the timeshare industry. This provides "transient vacation accommodations to thousands of guests each year." The Association controls day-to-day resort operations, including check-in and check-out, cleaning, maintenance, and collecting the resort fees.

Fractional timeshare interests are a type of real property under the Tennessee statute. When the Association challenged the 2016 market valuation of the property, the County counterclaimed asserting that rather than being assessed at the residential 25% level, the classification should be changed to the commercial 40% level. Then 2017 and 2018 were added. Finally, the Assessor changed the classification for 2019.

**Administrative and judicial review:** The County Board of Equalization upheld the Assessor. The State Board of Equalization ALJ affirmed finding that the "operation of the resort was not meaningfully distinguishable from the operation of any other vacation destination lodge or hotel." The State Assessment Appeals Commission (Commission), reversed for the Assessor's failure to abide by the State Division of Property Assessment (DPA) manual guidelines in the face of an historical practice placing timeshare properties

in the residential class ("should be classified and assessed as residential properties, rather than commercial or industrial"; "should be classified as residential and valued according to other comparable properties"). The Chancery Court noted that "these resorts look like commercial operations. . . [But] this case comes to me with a limited standard of review, [and] it is not the Court's duty to substitute its judgment for that of the commission".

**Issues:** (A) What is the proper classification for this property? (B) Was the Commission decision (1) in violation of constitutional or statutory provisions; (2) in excess of statutory authority; (3) made by unlawful procedure; (4) arbitrary or capricious, or an abuse of discretion; or (5) unsupported by the evidence?

**Decision:** (A) Residential; (B) Yes, on all five grounds. Trial court decision vacated.

- DPA manuals provide "guidance in determination of the *value* of all property".
- "*Classification* of all property is governed by the Tennessee Code, which provides that 'for all the purposes of taxation, all real property. . . shall be classified according to use."
- The use is commercial.
  - ✓ From 2016 through 2019 renters occupied 9.9%-15.7% of available nights generating $1,000,000 to $1,500,000 income annually.
  - ✓ A person may purchase an interest "for a specified unit but never actually stay and the Resort or even in Sevier County."
  - ✓ Unsold fractional interests are rented out to third parties for the benefit of the developer.
  - ✓ The resort "is used for commercial purposes as a single income-producing property that contains multiple rental units" and should be so classified.
- The Court's review here is *de novo*. Since Commission decisions "may not conflict with statutory provisions", it violated the law, exceeded its authority, adopted an unlawful procedure, acted in an arbitrary and capricious manner not based on reasonable exercise of judgment or basis, and unsupported by the evidence.

**Washington**

**North Point at Kitsap, NNC v. Cook, Docket nos. 100574 and 100575 (Washington Board of Tax Appeals, Tax Referee Pree, April 30, 2024), https://bta.wa.gov/Search.html, then search case name.**

**Facts:** The subject consists of two adjacent commercial retail properties purchased along with others in a multi-parcel sale in February 2021 for an aggregate price of $17,500,000. Taxpayer maintains this in an arm's length transaction after a two-year brokered market exposure after the seller rejected five other offers. The parties allocated $7,750,000 to

parcels -079 and -080 (together with two others also on Randal Way) without further breakdown. For the tax year 2021 appeals, Taxpayer believes that the requested new valuations for -079 and -080 (plus two other Randal Way parcels not appealed) supports the allocation of the bulk purchase price. The Assessor disagreed noting, *inter alia*, the substantial remodeling of one parcel, land lease encumbrance on another, and the non-market nature of the allocation among appealed and non-appealed properties.

**Evidence submitted:**

| | **3114 NW Randal Way (-079)** | **3108 NW Randal Way (-080)** |
|---|---|---|
| Building size | 14,025 sf | 15,822 sf |
| Site area | 1.05 acres | 1.18 acres |
| Constructed | 1994 | 1994 |
| Remodeling | 2020 | No |
| Defects | None | None |
| Prior lease | Snap Fitness: 5,624/sf ($12.83) | La-Z-Boy: $12.00/sf |
| Income Approach | | |
| **Owner** | | |
| Data | CoStar, Snap & La-Z-Boy leases | CoStar, Snap & La-Z-Boy |
| Rental rate | $12.00/sf modified gross | $12.00 modified gross |
| Vacancy | 10% | 10% |
| Expenses | 32% | 29% |
| NOI | $102,383 | $120,564 |
| Cap rate | 7.00 | 7.00 |
| CoStar | 6.90 | 6.90 |
| 5 sales | 7.85 (average) | 7.85 (average) |
| Tax load | 1.06 | 1.06 |
| FMV | $1,270,000 | $1,500,000 |
| **Assessor** | | |
| Data | Local survey—Class A small retail | Same: $25.19/sf, 15% vac. |
| Rental Rate | $14.30 triple net | 14.30/sf triple net |
| Vacancy | 15% | 10% |
| Expenses | 6% | 6% |
| NOI | $166,659 | $193,444 |
| Cap rate | 6.25 | 6.50 |
| Cap studies | 6.00-7.00/7.00-9.04 | 5.07-9.50/6.50-7.50 (model) |
| Tax load | None | None |
| FMV | $2,666,540 | $2,976,000 |
| Sales Comparison Approach | | |
| **Owner** | | |
| Data | 6 sales | Same 6 sales |

| | | |
|---|---|---|
| FMV | $2,100,000 | $2,300,000 |
| **Assessor** | | |
| Data | 5 sales | 6 large single tenant sales |
| FMV | $2,824,080 | $3,364776 |

**Court decision:**

| | **-079** | **-080** |
|---|---|---|
| • County and Assessor | $2,666,540 | $2,976,060 |
| Owner | $1,270,000 | $1,500,000 |
| Board of Tax Appeals | $2,400,000 | $2,770,000 |

- Parcel -079:
  - ✓ Both parties argue that the "dominant method of valuation should be the income analysis. The owner places "heavy reliance on the subjects' actual rental rates and a handful of other leases" of which the "specific terms" are "unclear" and "may be triple net leases with tenants agreeing to pay a larger portion of the leased properties' expenses than normal" and the Snap Fitness lease "may escalate over its six-year term".
  - ✓ "The Assessor provides a much larger sample of rental rates as well as typical expenses". However, the choice of a 6.25% cap rate is not consistent with its own data (i.e. 7.0-9.0% and 6.90%) and the Owner's CoStar and transaction data for 5 of 6 sales (8.35%, 6.80%, 9.50%, 7.1%, 7.49%). If it used the Assessor's NOI, the cap rate was about 6.9%.
- Parcel -080
  - ✓ Same observations with the additional note that "the La-Z-Boy lase may have been the tenant's renewal that did not reflect market rent."
  - ✓ While the Assessor's 6.5% cap was supported by his data, the Owner's data of 6.90% for the submarket and an average of 7.85% from the five sales indicates "that the Assessor erred" using 6.5%. Again, although not explicitly stated, if it used the Assessor's NOI, the cap rate was about 6.9%.

**Arllis Arms Apartments v. Wilson, Docket No. 99080 (Washington State Board of Tax Appeals, Tax Referee Felizardo, June 13, 2024), https://bta.wa.gov/Search.html, then search case name.**

**Facts:** The subject is a 32-unit residential Seattle apartment building containing all one-bedroom and one-bathroom units, built in 1962 with an effective age of 1995, consisting of 21,144 square feet NRA and located on a half-acre site. It is of average construction, overlooking the city skyline and the Olympic mountains. For tax year 2020, the Assessor and County valued the property at $332,500 per unit; taxpayer sought $281,250 per unit.

**Decision:** $320,000 per unit

- **Taxpayer evidence:** 4 sales ranging from $270,273 to $300,258 per unit which are similar in effective year-built, quality, and view but are inferior in number of units, average unit size, NRA, condition, and lot size.
- **Assessor evidence:** 4 sales, three of which are located in the same neighborhood and are similar in quality, condition, effective year-built, and view, and one of which although otherwise similar in all respects was from a different market area. The adjusted range of values was $346,481 to $385,424.
- Preference is given to the sales comparison approach where there are enough relevant sales within the past 5 years, giving due consideration for adjustments due to location, age, size, construction quality, condition, special features, and proximity to assessment date.

## EXEMPTION AND PREFERENTIAL STATUS: HOMESTEAD, VFW, AND DISABLED VETERANS

### Minnesota

**Janssen v. County of Carver, File No. 10-CV-20-143 (Minnesota Tax Court, Regular Division, Chief Judge Bowman, February 20, 2024), https://mn.gov/tax-court/search** , then search judge.

**Facts:** The taxpayer-owner of a 40-acre parcel as a *pro se* litigant testified that by living in a shipping container on the property, which he characterized as "wonderful, because they're dry, they're safe, they're secure, and they're movable", he was entitled to either a residential homestead or an agricultural homestead exemption. The County contended that the property was actually rural vacant land, revoking a previously granted exemption.

**Decision:** While overcoming the initial presumption of validity, taxpayer failed to meet his burden of proof, namely "affirmatively showing" by a preponderance of sufficient, substantial, credible evidence that the property was either "residential" or "agricultural"; that the Assessor's classification was "invalid or incorrect"; and that the taxpayer was entitled to either type of homestead exemption.

- Agricultural land classification
  - ✓ Parcels of land and associated buildings used for "the raising, cultivation, drying, or storage of agricultural products for sale, or the storage of machinery or equipment used in support of agricultural production by the same fame entity". It may include areas "interspersed with . . . sloughs, wooded wind shelters, acreage abutting ditches, ravines, rock piles, land subject to a setback requirement, and other similar land that is impractical for the assessor to value separately".

- ✓ Taxpayer: "So I want to testify that I do live there, I have lived there, it is ag land, and it continues to be ag land."
  - ➢ "No further testimonial evidence or exhibits to demonstrate facts to support his conclusion that the subject was 'ag land' ".
  - ➢ No discussion of "how many acres were in production or how the land was being used for agricultural production" and "conclusory statement" cannot overcome the original classification of vacant rural land which is taxed at a higher rate.

- Homestead exemptions
  - ✓ Residential: four criteria—ownership, residential real estate owner occupancy and use as a homestead, and Minnesota residency.
    - ➢ "Based on the evidence presented, however, the court cannot conclude that the subject qualifies as 'residential real estate' " since there was "no evidence that the shipping container in which he resided was plumbed, hooked up to gas or electricity, or otherwise would qualify as" such.
  - ✓ Agricultural: two criteria—agriculturally classified land together with any rural vacant land that is contiguous to it and under the same ownership.
    - ➢ Since the court confirmed the assessor's determination that the land is not agricultural (but rural vacant land), he cannot qualify.

**James Ballentine Post 246, VFW U.S. v. County of Hennepin, File No. 27-CV-21-13987 (Minnesota Tax Court, Regular Division, Chief Judge Bowman, July 16, 2024),** **https://mn.gov/tax-court/search** , then search judge.

**Facts:** A congressionally chartered veterans' organization and Minnesota nonprofit corporation owner of three parcels in Minneapolis sought benefit of a statutory reduction in tax classification rate from 1.5% to 1.0% as a "nonprofit community service-oriented organization not used for residential purposes on either a temporary or permanent basis" and "not used for a revenue-producing activity for more than six days in the calendar year preceding the year of assessment" and further "is allowed to be used for public and community meetings or events at no charge, as appropriate for the size of the facility". The real estate consists of a 4,000 square foot community room, small 200 square foot bar area, a separate restaurant with a bar, and 54-stall parking lot. The facility is generally open to the public and used for public and community meetings without charge.

**Issue:** On cross motions for Summary Judgment—Does the property operate "as a unit" in such a way as to place it entirely under the ambit of a statute which requires that ownership make charitable contributions which exceed property taxes paid? Are the component parts of the property separable for purposes of real property classification?

**Decision:** No. Summary Judgment granted to the VFW.

- "The purpose of the general statutory [classification] scheme . . . is to classify property according to use." Within that scheme, split classifications are contemplated.
  - ✓ The statute provides that "any portion of the property not qualifying" is to be assessed as commercial, industrial or utility property, as appropriate.
  - ✓ The Minnesota Supreme Court: "property may be used for more than one purpose and therefore subject to more than one classification".
  - ✓ An earlier 2024 Tax Court case: "described, in detail, several examples of when a split classification is possible", citing several statutory provisions.
  - ✓ The Tax Court here "takes judicial notice of the County's prior publicly filed settlements" in three 2024 cases employing split codes (e.g. commercial and vacant land with residential; residential and commercial; residential with apartment, lower income rental, and commercial).
  - ✓ The Department of Revenue Manual states "it may be possible to split-classify a property", offering suggestions where it may be appropriate.
- Parking lot
  - ✓ Individually generated no income.
  - ✓ Fulfilled all statutory criteria
- Community Room and Bar
  - ✓ Although there is cash bar "none of the Community Room bookings were revenue-generating".
  - ✓ Fulfilled all statutory criteria.
- Restaurant and Bar
  - ✓ This parcel falls under the charitable contributions made ($20,966.69) more than taxes paid ($17,269.86) requirement.
  - ✓ "The county has not alleged that the public or community were charged fees for the use of the space".
  - ✓ Fulfilled all statutory criteria.

**New Jersey**

**Alemany v Township of Marlboro, Docket No. 007209-2023 (Tax Court of New Jersey, Presiding Tax Court Judge Sundar, January 29, 2024), see Perry Cooper, "National Guard Covered by NJ Veterans Exemption, Tax Court Rules (Bloomberg Tax, January 30, 2024), https://news.bloombergtax.com/daily-tax-report-state/national-guard-covered-by-nj-veteran-exemption-tax-court-rules; approved for publication as reported at following: https://www.njcourts.gov/attorneys/opinions/published-tax https://law.justia.com/cases/new-jersey/tax-court/2024/07209-2024-v--.html**

**Facts:** *Pro se* applicant, a New Jersey resident and homeowner who entered "active duty" on March 26, 2012, and was honorably discharged on August 16, 2012, was notified by the VA on January 30, 2023 that she was entitled to 100% benefits effective March 29, 2021 (commencing that December 1) based on total and permanent service-connected disabilities. She had been called into "active duty" by order of the Governor and Adjutant General of New York in 2012 for "Operation Sandy" and continued her service in the Army National Guard from 2011 through 2019.

**Issue:** The New Jersey Constitution granted a real estate tax exemption to veterans "now or hereafter honorably discharged or released under honorable circumstances from active service in any branch of the Armed Forces of the United States" when determined to have a "service-connected disability". Prior to 2020 it was limited to service "in time of war". A constitutional amendment, approved by voters on December 3, 2020, eliminated that condition. At least eight corresponding statutory references were then repealed.

There are now five criteria for the exemption: (1) New Jersey residency, (2) ownership of a primary New Jersey residence, (3) honorable discharge or release, (4) VA declaration of 100% service-connected disability, (5) "active service in any branch" of the U.S. Armed Forces. Only the final criterion is contested, and that term is undefined in New Jersey law.

**Assessor's position in denial of the exemption application:**

- The DD-214 identified a call to "active duty for training purposes."
- New Jersey Division of Taxation routinely advised applicants that New Jersey statutes and revenue regulations dating back from 1948 and 1951 all stated that "active-duty training or field training" did not support eligibility for the exemption unless the National Guard was activated "into federal service". This was also reflected in a 2018 regulation.
  - ✓ This interpretation was upheld in a 1973 New Jersey Attorney General Opinion and in an Appellate Division decision in 2007.
  - ✓ Even when the "in time of war" language was removed, a reference to qualifying service "in a reserve component" in the enabling legislation was removed in committee, leaving in place the generally understood meaning of "active duty" excluding "training service".

**Decision:** Exemption approved.

- Under four separate federal statutes, "the U.S. Army National Guard is a reserve component of the U.S. Armed Forces."
- The New Jersey Constitution merely requires "active service".
- 2018 NJ regulation "tied to" former "in time of war or conflict" provision.

- The DD-214 refers to "net active service" and "first full term of active service" as well as her transfer to the New York National Guard.
- The term "active service" under federal military law is "active duty or full-time National Guard duty" and the latter phrase is defined as any duty "performed by a member of the Army National Guard of the United States . . . in the member's status as a member of the National Guard of a State or territory."
- Relying on prior "active service" definitions is "problematic", being premised upon (i.e. tied to) satisfying the requirement of the qualifying phrase 'in time of war' ".
- The purpose of the new statutes is to extend and expand (not limit) the benefits.

**Addendum**
**Arizona**

**Benjamin v. Arizona Department of Revenue, 163 Ariz. 182 (Ariz. App. Ct.), 786 P.2d 1033 (1990),** voided disabled veterans' residency requirements under Equal Protection clause. Voters recently reinstated the exemption for a primary residential homestead. See Ariz. Const. Article 9, Section 2, D (6) (Prop. 130, Nov. 8, 2022) and HCR 2027 (55th Leg., 2nd Reg. Sess.).

**Texas**

**Bexar Appraisal District v. Johnson (Supreme Court of Texas, Justice Huddle, June 7, 2024), 2024 WL 2869321, https://law.justia.com/cases/texas/supreme-court-2024/22-0485.html (majority) together with https://caselaw.findlaw.com/court/tx-supreme-court-116244912.html (dissent),** presents an engaging and truly fascinating discussion.

**Facts:** Yvondia and Gregory Johnson, a married couple, are both 100% disabled U.S. Air Force veterans. In 2012, while living together in their jointly owned San Antonio home, Gregory received an exemption removing the complete value of their residence homestead from *ad valorem* taxation. Years later, they bought another home in Converse, but when they separated and Yvondia continued living there with Gregory remaining in San Antonio. Yovandia applied for exemption on Converse for year 2020. The Bexar Appraisal District refused it, based on "[s]pouse claiming exemptions" at the San Antonio residence. She protested the appraisal district's decision to the Bexar Appraisal Review Board which affirmed the denial. On cross motions for summary judgment, the trial court ruled for taxing authority. However, the Court of Appeals reversed and granted the exemption.

**Issue:** Does the disabled veteran tax exemption have a one-per-married-couple limit?
**Decision:** No.

- The Court of Appeals "correctly concluded that the Tax Code bestows the exemption on each individual 100%disabled veteran who meets the express

statutory requirements without regard to whether the veteran's spouse also claims the exemption on a separate "residence homestead".

- The opinions traced a myriad of Texas Constitutional provisions and amendments (1866, 1869, 1876, 1973, 1978, 2007), court decisions (1873, 1874, 1884, 1887, 1891, 1895, 1909, 1924, 1929, 1936, 1943, and onward), and statutes defining "homestead", "homestead purposes", "residence homestead", and "disabled veteran" (*e.g*. 1973-1980 and 2007-2009).
    - ✓ Majority opinion (7 justices):
        - ➢ Constitution: "The legislature by general law may exempt from ad valorem taxation all or part of the market value of the residence homestead of a disabled veteran who is certified as having a service-connected disability with a disability rating of 100 percent or totally disabled and may provide additional eligibility requirements for the exemption."
        - ➢ Statute: "A disabled veteran who has been awarded by the Department of Veterans Affairs. . . 100 percent disability compensation due to a service-connected disability and a rating of 100 percent disabled. . . is entitled to an exemption from taxation of the total appraised value of the veteran's residence homestead.
        - ➢ "When, as here, the Legislature supplies an express definition for a term the statute employs, the statutory definition displaces the term's historical or ordinary meaning, and we are bound to give that term the meaning the Legislature ascribed it. Ms. Johnson satisfies the express, unambiguous requirements of [the law] and therefore is entitled to the benefit of the tax exemption for 100% disabled veterans."

    - ✓ Dissenting opinion (2 justices):
        - ➢ "For the first time in Texas history, the Court departs from the deeply embedded legal principle that "[t]here cannot be one homestead for the wife and another for the husband, for the law protects but one to the entire family" [citation omitted]. The Court instead concludes that a married couple can have two residence homesteads and claim a tax exemption for both. "
        - ➢ "If this statute clearly and unambiguously, free from all doubt, creates the first-in-history two-per-couple exemption, then the sky is the limit. The Court claims to follow the clear-and-unambiguous canon for tax exemptions, but it in fact discards it, and that seems like a pretty high price to pay."