

Effective Advocacy in Property Tax Disputes

In a Revaluation Year

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In order to be effective, advocates in property tax disputes must have a good working knowledge of how the process works generally, have control of the deadlines and preservation of rights, and a working knowledge of common errors made associated with the process and an understanding of how tax assessments can be appealed. These materials will address these issues.

I. Tax Assessment Process Generally.

a. *Assessment Performed in Odd Years.*

- i. Missouri property is reassessed as of January 1 of odd numbered years.^{1,2}
- ii. Exception: New construction or property improvements.
Caveat: Statutory language ambiguous.³

b. *Assessment Timeline.*

- i. January 1 (Even Year) – Maintenance Plan (procedure provided in Section 137.115(1) R.S.Mo. 2009).
- ii. January 1 (Odd Year) New Assessed Values Determined.
- iii. March 1 – Assessment Books Due to Clerk.

Practice Note: In order for the assessments (valuation date of January 1) to be concluded and entered into the books by

¹ RSMo §137.115.1. "...The assessor shall annually assess all real property in the following manner: new assessed values shall be determined as of January first of each odd-numbered year and shall be entered in the assessor's books; those same assessed values shall apply in the following even-numbered year, except for new construction and property improvements which shall be valued as though they had been completed as of January first of the preceding odd-numbered year..."

² 12 CSR 30-3.001

³ RSMo §137.082.

March 1, the assessors are not able to consider comparable sales with closing dates after mid-summer.

- iv. March 15 – Clerk Provides Values to Political Subdivision.
- v. April 8 – Political Subdivision Provides *Tax Rates* to Clerk.
- vi. April 8-30 – Clerk Provides Tax Rates to Collector.
- vii. April 30 – Collector Provides Projected Tax Liability to Assessor.

Practice Note: Preliminary assessments may be available from assessors on their web site.

- viii. June 15 – Deadline for Notice of Valuation Increase to Property Owners.

Practice Note: St. Louis City and St. Louis County assessors anticipate delivery of notice in May.

c. Calculating Taxes Due.

- i. Determine Subclass of Property per existing zoning.⁴
 - 1. Residential
 - 2. Agricultural/Horticulture
 - 3. Commercial

⁴ RSMo §137.115.5 “All subclasses of real property, as such subclasses are established in section 4(b) of Article X of the Missouri Constitution and defined in section 137.016, shall be assessed at the following percentages of true value:

(1) For real property in subclass (1), nineteen percent; (2) For real property in subclass (2), twelve percent; and (3) For real property in subclass (3), thirty-two percent.”

- ii. Determine Appraised Value for Assessment Purposes.
 - 1. Real property is appraised by the assessor in terms of its “true value in money.”
 - 2. The true value in money of a property is defined as the price which the subject property would bring when offered for sale by one willing but under no compulsion to sell it, and is bought by one willing or desirous to purchase, but who is not compelled to do so. True value in money is defined in terms of value in exchange and not in terms of value in use.⁵
- iii. Subclasses of Property are assessed at the following percentages of “true value”:
 - 1. Residential at 19%
 - 2. Agricultural/Horticulture at 12%
 - 3. Commercial at 32%
- iv. Determine Tax Levy.
 - 1. The tax levy varies within the state and within a particular county.
 - 2. Various entities have tax rate setting authority.⁶

⁵ *Equitable Life Assur. Soc. Of U.S./Marriott Hotels, Inc. v. State Tax Com'n of Missouri*, 852 S.W.2d 376 (Mo.App.1993).

⁶ See, e.g., V.A.M.S. §§ 92.030.1; 92.035.1; 94.060.1; and 94.250.1.

v. Do the Math.

1. True value **X** statutory percentage of true value
X tax levied from political subdivision = **TAXES DUE**

2. **EXAMPLE.** In St. Louis City, Missouri, real property taxes in 2008 for property with an appraised true value of \$200,000 would be calculated as follows:
 - a. If Residential: $\$200,000 \times 19\% = \$38,000$ assessed value \times tax levy of 6.4695% = **\$2,458.41 taxes due**

 - b. If Commercial: $\$200,000 \times 32\% = \$64,000$ assessed value \times tax levy of 8.1095% = **\$5,190.08 taxes due**

d. *Notice of Assessment.*

- i. Notification required when the assessor increases the value of real estate.⁷

- ii. Notice must be provided to property owners by June 15 of odd numbered years.

- iii. Assessment Notice Requirements.⁸

- iv. No Notice = Pay Under Protest.

⁷ RSMo §137.180.1 "Whenever any assessor shall increase the valuation of any real property he shall forthwith notify the record owner of such increase, either in person, or by mail directed to the last known address; every such increase in assessed valuation made by the assessor shall be subject to review by the county board of equalization whereat the landowner shall be entitled to be heard, and the notice to the landowner shall so state."

⁸ See RSMo §137.180 2008. Significant changes made by SB 711.

- v. No Notice (Fault of Assessor): The failure of an individual to receive the notice of increased assessment is not a basis for non-payment of taxes, but if the lack of notice was the assessor's fault, the rights of the assessor are limited.⁹

e. *Residential Properties: Physical Inspection*

- i. Physical Inspection (Exterior) Required Before Increase.¹⁰
 - 1. Increased More than 15%.
 - 2. Excluding increases due to new construction or improvements.
- ii. Notice of Inspection (Charter County with 1 Million).¹¹
 - 1. Property owner has at least 30 days from the notification to request an interior inspection be performed, along with the exterior physical inspection.

⁹ In *Buck v. Leggett*, 813 S.W.2d 872, 876 (Mo.1991), the court noted that individuals are charged with notice that they owe real property taxes and are expected to pay those taxes.

¹⁰ RSMo §137.115.10-13

¹¹ RSMo §137.115.11-13

II. **Appealing the Assessor's Decision: Exhaust Remedies.**¹²

a. *Boards of Equalization ("BOE")*^{13, 14}

i. Jurisdiction.

1. Aggrieved Person.
2. Location of Land: Each County and City (not located in a County) has its own BOE.
3. Forms furnished where written appeal required.
4. Deadline: Appeals to the BOE must be submitted prior to the Second Monday in July.¹⁵

Caveat: RSMo §137.385 not amended by SB 711.

ii. Option for Informal Conference (St. Louis City and County).

1. Quick and efficient resolution of the dispute without having to appear before the Board.
2. Informal conferences are scheduled to be held mid-May to mid-June 2009.
3. Residential property owners will meet with an appraiser to see if valuation issues can be resolved.

¹² *Exhaustion of Administrative Remedies* – See *Buck v. Leggett*, 813 S.W.2d 872, 875 (Mo.1991), *Pessin v. State Tax Commission*, 875 S.W.2d 143 at 146 (Mo.App. 1994), and *Gershman v. St. Louis County*, 963 S.W.2d 290, 293 (Mo.App.1997).

¹³ RSMo §137.385 "Any person aggrieved by the assessment of his property may appeal to the county board of equalization. An appeal shall be in writing and the forms to be used for this purpose shall be furnished by the county clerk. Such appeal shall be lodged with the county clerk as secretary of the board of equalization before the third Monday in June; provided, that the board may in its discretion extend the time for filing such appeals."

¹⁴ RSMo. §138.060.1 "The county board of equalization shall, in a summary way, determine all appeals from the valuation of property made by the assessor, and shall correct and adjust the assessment accordingly."

¹⁵ § 137.275 RSMo. 2008 and § 138.180 RSMo. 2009

4. Commercial property owners appear before a hearing officer along with a representative from the assessor's office to argue their positions.
 5. Decisions of the hearing officer or disagreements with the appraiser can be appealed to the BOE.
- iii. Burden of Proof on Assessor that valuation does not exceed the true market value of the subject property.¹⁶
 - iv. Opinion of Value.

Practice Note: Sources of proof of value include, without limitation: comparable sales, photographs of defects, written repair estimates, operating information, rent rolls, leases, appraisals and recent sale contracts.

Practice Tip: Assessor is not able to use comparable sales from June to December of the even-numbered year immediately preceding the reassessment due to Assessor's own deadlines. In addition, no consideration will be given to sales, leases or other transactions occurring after the date of valuation (January 1 of odd-numbered years).

- v. Hearing Dates: mid-July through August 2009¹⁷
- vi. BOE decisions will be mailed in September 2009.
- vii. Further Review. BOE decisions can be appealed to either the State Tax Commission or, under some instances, directly to the Circuit Court.¹⁸

¹⁶ RSMo § 138.060

¹⁷ RSMo §138.050.1 2009.

¹⁸ § 138.430 RSMo. 2009

- b. Appeal BOE decision to the Missouri State Tax Commission (“STC”)*
- i. Form: Complaint for Review of Assessment (“CRA”).
 - ii. Attach a copy of the BOE decision to the CRA.
 - iii. Deadline: file with the STC by September 30 in the tax year or 30 days after the BOE decision, whichever is later.¹⁹
 - iv. STC has discretion to assign appeal to the following:²⁰
 1. Hearing Officer;
 2. STC Commissioner;
 3. Quorum or Full Commission;
 4. Mediation (with consent of the parties).^{21, 22}

¹⁹ RSMo §138.430.1 “Every owner of real property or tangible personal property shall have the right to appeal from the local boards of equalization to the state tax commission under rules prescribed by the state tax commission, within the time prescribed in this chapter or thirty days following the final action of the local board of equalization, whichever date later occurs, concerning all questions and disputes involving the assessment against such property, the correct valuation to be placed on such property, the method or formula used in determining the valuation of such property, or the assignment of a discriminatory assessment to such property.”

²⁰ § 138.431(2-3) R.S.Mo. 2009

²¹ 12 CSR 30-3.085(1) “Parties to an assessment appeal may agree to pursue mediation and file a request for an appeal to be submitted to mediation. Upon approval of the commission, such appeals will be placed on a mediation docket.”

²² RSMo § 138.431

- v. Standard of Review:²³
 - 1. De Novo.
 - 2. The STC shall correct any assessment or valuation which is unlawful, unfair, improper, arbitrary or capricious.
- vi. A full and complete record (non-transcription) required.²⁴
- vii. Valuation Evidence:
 - 1. Testimony similar to BOE.
 - 2. No presumption that the assessor's valuation is correct.²⁵
- viii. Prior to Hearing Officer's Decision: the STC may transfer the appeal to another hearing officer.²⁶
- ix. Hearing Officer Decision:
 - 1. Affirm, reverse or modify BOE decision.²⁷
 - 2. Issued no later than sixty (60) days after the hearing on the matter to be decided is held or the date on which the last party involved in such matter files his or her brief, whichever event later occurs.²⁸

²³ RSMo §138.430.2 "In order to investigate such appeals, the commission may inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to the valuation, subclassification or assessment of the property. The commission may make its decision regarding the assessment or valuation of the property based solely upon its inquiry and any evidence presented by the parties to the commission, or based solely upon evidence presented by the parties to the commission."

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

- x. Apply to STC for review of Hearing Officer Decision:²⁹
 - 1. Within thirty (30) days of notification of such decision.
 - 2. Such application shall contain specific detailed grounds upon which it is claimed the decision is erroneous.
- xi. STC Decision re: Review of Hearing Officer Decision:³⁰
 - 1. If allowed, the commission may do the following:
 - a. affirm, modify, reverse, or set aside the decision and order of the Hearing Officer on the basis of the evidence previously submitted in such case;
 - b. Take additional evidence; or
 - c. Remand the matter to the hearing officer with directions.
 - d. The commission shall promptly notify the parties of its decision and order, together with its findings of fact and conclusions of law.
 - e. The decision of the commission shall be subject to judicial review
 - 2. Deny Review = Final Decision of STC for Judicial Review.
- xii. See Appendix for the Missouri State Tax Commission Reference Guide for further information.

²⁹ § 138.432 R.S.Mo. 2009.

³⁰ *Id.*

c. *Circuit Courts*

i. Direct Review of BOE.

1. Deadline: within 30 days after the final BOE decision.³¹
2. Jurisdiction:³²
 - a. Exclusion or exemption from assessment or from the tax rolls pursuant to the Constitution of the United States or the constitution or laws of this state; or
 - b. The taxable situs of such property.

ii. Appeal of STC to Circuit Court.³³

1. Limited Review regarding whether the agency's action did the following:³⁴
 - a. violated constitutional provisions;
 - b. exceeded its statutory authority or jurisdiction;
 - c. is unsupported by competent and substantial evidence;
 - d. is unauthorized by law;
 - e. is made upon unlawful procedure or without a fair trial;
 - f. is arbitrary, capricious, or unreasonable; or
 - g. involved an abuse of discretion.

³¹ RSMo §138.430.3 "Every owner of real property or tangible personal property shall have the right to appeal to the circuit court of the county in which the collector maintains his office from the decision of the local board of equalization not later than thirty days after the final decision of the board of equalization concerning all questions and disputes involving the exclusion or exemption of such property from assessment or from the tax rolls pursuant to the Constitution of the United States or the constitution or laws of this state, or of the taxable situs of such property."

³² *Id.*

³³ RSMo §138.430.1 "Any person aggrieved by the decision of the commission may seek review as provided in chapter 536, RSMo."

³⁴ RSMo § 536.140

III. Appealable Issues

a. *Value* – The price the property would bring when offered by a willing seller who is not obliged to sell, and when bought by someone willing to purchase but is not compelled to do so.

i. Valuation Approaches

1. Income Approach:³⁵ value indicated by a property's earning power through the capitalization of its net operating income or through the present worth of future benefits.
2. Sales Comparison Approach:³⁶ value indicated through adjusting recent sales of comparable properties to the subject property.
3. Cost Approach:³⁷ value is estimated for the land under the sales comparison approach. The value of the improvements, determined through the cost of reproduction minus depreciation, is added to the value of the land.

b. *Classification*

- i. Percentage of "true value" assessed differs greatly between the three subclasses of real property (See Section I(c)(iii) above).

³⁵ The Appraisal of Real Estate, p. 50, 12th ed., The Appraisal Institute, (2001).

³⁶ *Id.*

³⁷ *Id.*

ii. Residential.

1. The following are classified as Residential:³⁸
 - a. Property improved by a structure which is used or intended for residential living;
 - b. Vacant land in connection with an airport;
 - c. Land used as a golf course: and
 - d. Manufactured home parks.

Exception: similar facilities used primarily for transient housing.
2. "Transient Housing" means rooms available for rent or lease for which the rent or lease of such rooms are subject to state sales tax pursuant to RSMo §144.020.1(6).
3. *Dominion Hospitality v. Zimmerman*: the availability of rooms, not their actual use, controls the classification. If the facility (such as a hotel) makes more than half the rooms available for short-term occupancy, the property is to be classified as commercial.³⁹

³⁸ RSMo §137.016.1(2)

³⁹ *Shipman v. Dominion Hospitality*, 148 S.W.3d 821 (Mo. Banc 2004).

iii. Agricultural and Horticultural.

1. Property used for agricultural purposes and devoted primarily to the raising and harvesting of crops; to the feeding, breeding and management of livestock.⁴⁰
2. The following do not change the agricultural classification of the property if agricultural use continues:⁴¹
 - a. The owner changes;
 - b. The owner files a subdivision plat; or
 - c. The owner has plans for future development.

iv. Utility, Industrial, Commercial, Railroad and Other Real Property: all property whose use is neither residential nor agricultural.⁴²

v. Suitable Economic Use.

1. Property which is (a) Vacant; (b) Unused; or (c) held for future use - for which a determination of its classification cannot be made under the definitions in RSMo §137.016 is to be classified according to its "immediate most suitable economic use."⁴³

⁴⁰ RSMo §137.016.1(1)

⁴¹ *Park 370 Development v. Muehlheausler*, Appeals Number 02 - 10275 thru 02 - 10286 (MO STC, December 19, 2003).

⁴² See RSMo §137.016.1(3), see also *Heath v. Peery*, Appeal Number 01 - 41500 (MO STC, January 4, 2002).

⁴³ RSMo §137.016.1(5), see also *Heath v. Peery*, Appeal Number 01 - 41500 (MO STC, January 4, 2002).

2. "Immediate most suitable economic use" shall be determined after a consideration of:⁴⁴
 - a. immediate prior use, if any of such property;
 - b. location of such property;
 - c. zoning classification;
 - d. other legal restrictions;
 - e. availability of water, electricity, gas, sewers, street lighting and other public services for the property;
 - f. access to public thoroughfares; and
 - g. any other factors relevant to the most suitable use.

vi. Mixed Use.

1. When property is held for more than one purpose, and
2. Such uses result in different classifications, then
3. The county assessor shall allocate to each classification the percentage of the true value in money of the property devoted to each use.⁴⁵

c. *Discrimination.*

- i. When assessed value is unfair as compared to like properties.
- ii. Assessments must be uniform.⁴⁶

⁴⁴ RSMo §137.016.1(5), see also *Heath v. Peery*, Appeal Number 01 - 41500 (MO STC, January 4, 2002).

⁴⁵ RSMo §137.016.4 deals with the potential varied uses of properties and directs the assessor to classify the property according to those uses.

⁴⁶ RSMo §137.490.2 "Effective January 1, 2009, the assessor, or his or her deputies under his or her direction, shall commence their assessment on the first day of January in each year and complete the assessment, and the deputies make their final reports thereof to the assessor, on or before the first day of

IV. Assessor Errors

a. Condominium Parcels.

- i. Each condominium unit, together with its interest in common property is a separate parcel of real estate.⁴⁷
- ii. Common property is not to be taxed separately to the unit owners or to the condominium association, unless the declarant has reserved any development right on such common property.⁴⁸

b. Classifications and Splits – See above regarding RSMo §137.490.1.

V. Paying Taxes.

a. Taxes must be paid by December 31 each year.

- i. Regardless of whether under appeal.
- ii. The appeal process often extends beyond December 31, which forces the taxpayer to pay the taxes as assessed while the appeal is pending.

b. Payment Under Protest.

- i. File a WRITTEN statement along with tax payment which sets forth grounds for protest.⁴⁹

1. There is no mechanism for getting a refund for taxes that are paid, if they are not paid under protest.

March next following. The assessor shall see that the assessment is made uniform and equal throughout the city.”

⁴⁷ RSMo §448.1 - 105.1

⁴⁸ RSMo §448.1 - 105.2

⁴⁹ RSMo §139.031.2 “For all tax years beginning on or after January 1, 2009, any taxpayer desiring to protest any current taxes shall make full payment of the current tax bill and file with the collector a written statement setting forth the grounds on which the protest is based.”

2. Paying the taxes under protest alerts the taxing authority to place the amount paid in a special account so that it can be repaid to the taxpayer upon a successful appeal.⁵⁰
3. If a taxpayer is successful on appeal and has already paid the taxes due under protest, the Collector must disburse the excess taxes paid to the taxpayer including the interest earned on the taxes paid under protest.⁵¹

VI. Appendices

- a. Assessment Timeline
- b. Senate Bill 711
- c. Complaint for Review of Assessment to the State Tax Commission
- d. Missouri State Tax Commission Guidelines for Appeal
- e. Case Law and Missouri State Tax Commission Decisions

Other Resources

- i. Missouri State Tax Commission (www.stc.mo.gov)
- ii. Missouri State Assessors Association
(www.moassessorsassn.org)

⁵⁰ RSMo §139.031.3

⁵¹ *Id.*