



TAX TRENDS

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PTAB clarifies uniformity standards for income properties

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The principles of uniformity require equality in the burden of taxation. *Kankakee County Board of Review v. The Property Tax Appeal Board*, [131 Ill.2d 1](#) (1989). Taxpayers objecting to their property tax assessments on the basis of lack of uniformity bear the burden of proving such inequity by “clear and convincing evidence.” *Id.* In the non-residential context, proving lack of uniformity can be particularly challenging because, applying this heightened standard of proof, a taxpayer must prove that the property at issue has the same income producing characteristics as the taxpayer’s proposed comparables. This is because the “cornerstone of uniform assessment is the fair cash value of the property in question. As stated, a property’s income-earning capacity is an important factor in determining its fair cash value.” *Id.* The Illinois Property Tax Appeal Board (PTAB) recently had occasion to decide two cases challenging assessments of income producing properties based on lack of uniformity. In each case, the PTAB ruled that the taxpayer did not meet its burden of proof because it failed to prove by clear and convincing evidence that the comparables had the same income producing characteristics, and therefore the same fair cash value, as the properties in question. In both decisions, *Momence Community School District*, Docket No. 08-05004 (“*Momence Meadows*”) (appellate court review pending), and *JJS, Inc.*, Docket No. 08-29545 (“*JJS*”), the PTAB found that because the taxpayers failed to prove that the fair cash value for the subject properties and the comparables were the same, the taxpayers were not entitled to relief.

On October 24, 2014 the PTAB issued the decision, *Momence Meadows*, concerning a rural Kankakee County nursing home. In that case, the local school district filed a PTAB appeal challenging uniformity relief granted by the Kankakee County Board of Review. The taxpayer’s evidence made a showing that the other Kankakee nursing homes, assessed at a lower rate, were comparable in size and location, but failed to prove that the other nursing homes had the same value as the property at issue. The school district argued that a nursing home’s fair cash value is influenced by many factors apart from physical characteristics; for instance, the number of Medicare patients served affected the amount of subsidies received for each patient, which in turn affected the income capability of the property. Because the taxpayer did not provide sufficient evidence to prove that the income producing capacity and fair cash value of the subject property was sufficiently similar to that of the taxpayer’s proposed comparables, the PTAB ultimately held that the taxpayer failed to meet its burden of proof. Citing *Riverwoods*, the PTAB held that in order to prove lack of uniformity, a taxpayer must not simply rely upon a bricks-and-mortar comparison. Rather, a taxpayer must “provide credible documentary evidence to show the market values of the comparable properties.” *Momence Meadows*, page 19.

Similarly, in *JJS*, issued on December 19, 2014, the taxpayer appealed the assessment of a hotel in South Cook County, contending lack of uniformity as the basis for appeal. In support, the taxpayer submitted information on the

size, construction, and capacity of seven area hotels assessed at lower rates than the property under appeal. However, the evidence revealed that although the comparables were similar in size and location, the subject property's revenue per average room ("RevPar"), a key indicator of hotel financial health, was significantly higher than that of any of the taxpayer's seven comparables. Therefore, even though the subject and the comparables shared physical similarities, the subject had a greater ability to produce income, and therefore a greater fair cash value than the comparables. In ruling against the taxpayer, the PTAB found that "while all of the comparables were fairly similar to the subject in age, design, number of stories, number of available rooms, and square footage, they varied significantly in their individual income-earning capacity."

Based on the PTAB's decisions, it is clear that the *Riverwoods* principles remain good law. Practitioners should be mindful that in the non-residential context, uniformity is not judged solely on physical and geographic similarities. Rather, "uniformity is achieved only when all property with the same income-earning capacity and fair cash value is assessed at a consistent level." *JJS* at p. 11. The taxpayers in *Momence Meadows* and *JJS* failed to prove the fair cash value of the subject properties and the comparables and, therefore, could not succeed in their uniformity arguments. ■

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