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A National Review of Uniformity in Ad Valorem Tax Valuation of Billboard Property

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Ad valorem taxation requires uniformity and universality to ensure taxation equality for all taxpaying citizens. To that end, many of the statutes and constitutional amendments passed in the United States require the application of taxes be uniform, universal, and fair. This article examines the uniform application of ad valorem taxation to billboard property interests across the nation. Case law and statutes from a variety of states were selected for review as well as appraisal field manuals issued by several state departments of revenue. Current thinking on the subject as expressed in the writings in scholarly publications and the content of industry forums was explored. All of these authorities are consistent with the application of a uniform ad valorem tax approach to value billboard structures on a cost basis.

Previously, only one article has surveyed the national scene on this topic and it was written in 2004. This article will address that survey and provide an

explanation of the purpose of ad valorem taxation and an update of the actual application of ad valorem taxation as it is uniformly applied to billboard property across the nation today as constitutionally required.

Historical Background

It is important to review the genesis of ad valorem taxation in order to understand its application today. *Ad valorem* is Latin for “according to the value.” (Black 2004, 57) The definition states that an ad valorem tax must be “proportional to the value of the thing (or property) taxed.” (p. 57)

Property taxes date back to 6000 B.C. when ancient civilizations such as Egypt, Babylon, Persia, and China established initial forms of property taxes. Alexander the Great instituted property taxes in conquered territories during the time period from 356 B.C. to 323 B.C. (Carlson 2005, 4) William the Conqueror

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created an early form of land taxation in England in 1066 A.D. based on the amount of land that could maintain a family (Benson 1965). These taxes were levied under the concept of a "tithe" and were typically a flat tax assessment. In the thirteenth century, England evolved property tax into a tax identified as the "Fifteenth and Tenth" tax, a tax of one-tenth of the value of property located in towns and cities and one-fifteenth of personal property (Benson 1965).

American colonies began the imposition of ad valorem property taxes in the 1600s (Reinhard 1998, 871, n.55). After independence, the concept progressed as many states adopted constitutions requiring uniformity and universality in taxation (Benson 1965, 31). The California Supreme Court reinforced this intent in the case of *People of the State of California v. Lynch* (1875), stating "it is of the very essence of taxation, in every form, that it be levied with equality and uniformity.... The requirement that it shall be uniform is universal...." (p. 19)

Over the development of property taxation, this movement toward equality and uniformity of the tax to all citizens prevailed. One outcome was the differentiation between types of property led by the passage of statutes and constitutional amendments excluding intangible property from the scope of ad valorem property taxation. This exclusion indicated that taxing authorities could focus their collection efforts on property that was more easily identifiable. This change in property taxation caused by the classification movement still exists as most jurisdictions do not levy a property tax on intangible personal property (Reinhard 1998, 884–885). The case of *Fulcroft Borough v. General Outdoor Advertising Company, Inc.* (1950) holds: "The Constitution of Pennsylvania, Article IX, Sec. 1, provides all taxes shall be uniform The principle of uniformity requires that property taxes be imposed on an ad valorem basis A property tax which is

not imposed on an ad valorem basis violates the constitutional requirement of uniformity." (p. 543–544) Therefore, it is long established law in this country that taxes be uniformly and fairly applied. The forthcoming portion of this article examines the uniformity in approach to ad valorem taxation of billboard property across the country.

National Review of Billboard Taxation

O'Neill/Marsh Article

A beginning point for this discussion is the comprehensive article written by Cris K. O'Neill and Bradley R. Marsh published in the *Journal of Property Tax Assessment & Administration* in 2004. The authors present a thorough analysis of the assessment of outdoor advertising property interests in a number of states with large billboard populations. O'Neill and Marsh recognized that "billboard property interest is a complex property" (p. 5) and the valuation method needed is one that "accurately reflected the value of the tangible, taxable property, while avoiding the inclusion of related intangible assets and rights (e.g., permits and advertising contracts) most of which are specifically exempt from property taxation in many states." (O'Neill and Marsh 2004, 7) The authors go on to state "Because intangibles are exempt in most states, the emerging trend in assessment practice is to use the cost approach. ...many states have warned that income and comparable sales approaches tend to include intangible value and fail to overcome problems caused by analyzing advertising revenues generated by multiple billboards." (p. 11) The authors cite California, Florida, Ohio, Texas, North Carolina, and Wisconsin as states that apply the cost approach to the outdoor advertising structure for taxation purposes and avoid seeking to assess property on intangible interests such as the permit. They also provide a detailed discussion of these states' relevant tax policies (p. 8–11).

An Update of State Practices

As O'Neill and Marsh found, most states follow a depreciated cost assessment for billboard property taxes. A recent review indicated that a number of additional states appear to follow the same approach of taxing only the structure on a cost approach basis when valuing billboard property for ad valorem tax purposes.

Indiana. The *Indiana Administrative Code* provides that billboards are personal property for tax purposes (*Indiana Administrative Code* 2009, title 50, article 4.2-1-1(h)(3)). The assessment is based on a depreciated cost analysis (article 4.2-4-2).

Michigan. The General Property Tax Act classifies all outdoor advertising signs as billboards as assessable personal property (*Michigan Compiled Laws* 2010, section 211.34(c)). Personal property assessments use acquisition costs adjusted by depreciation multipliers to reflect declining values as an asset ages (section 211.1 *et seq.*).

Missouri. The assessor manual issued in March 1, 2009, by the State Tax Commission of Missouri states, "Consideration is given to all three approaches to value billboards. The cost approach is the easiest to perform and usually the most defensible approach." (State Tax Commission of Missouri 2009, VII-6-1) The manual goes on to state: "If the billboard(s) and the land have different owners, the billboard is a leasehold improvement and has the appropriate UPN [Uniform Parcel Number]." (p. VII-6-1) The manual then explains that the billboard structure is valued at "replacement cost new less depreciation value." (p. VII-6-4) Missouri classifies billboards as real property for ad valorem tax assessment (*Thompson v. Osage Outdoor Advertising, Inc.* 1984).

Nevada. The Nevada property tax statute provides that the Nevada Tax Commission shall, by regulation, establish: "Standards for determining the cost of replacement of personal property

of various kinds. The standards must include a separate index of factors for application to the acquisition costs of a billboard to determine its replacement costs." (*Nevada Revised Statutes* 2009, section 361.227(6))

New Jersey. The New Jersey Division of Taxation issued a new assessment of billboards section to its real property appraisal manual in February 2005 as a result of a 2004 study. The manual now states that the "cost approach provides an efficient methodology to uniformly value billboard structures. The replacement cost less depreciation avoids the complicated allocation process and other issues associated with the income and market approaches. The cost approach may be applied uniformly and it is suitable for computer-assisted mass appraisal (CAMA) applications." (State of New Jersey 2005, p. 71.01-24) The manual also identifies billboards as real property for taxation purposes (p. 11-701).

North Carolina. The North Carolina Department of Revenue Property Tax Division publishes the *Billboard Structures Valuation Guide*. The guide, for tax years beginning January 1, 2009, begins by stating:

Based on the experience gained with the implementation of the first Billboard Structures Valuation Guide, we have made revisions to the current manual to reflect the changes in costs associated with the construction of billboards. We feel these changes will simplify the valuation process used by local taxing jurisdictions and enhance the uniformity and accuracy in the valuation of outdoor advertising for mass appraisal purposes. (North Carolina Department of Revenue 2009, 2)

The manual sets forth a depreciated valuation approach based on the square footage of the billboard structure (p. 2, 11-19).

Oregon. Procedures for billboard valuation in Oregon are outlined in a publication entitled *Billboard Cost Factors*

Off-Premise Outdoor Advertising, Series 150 dated May 2007 (Oregon Department of Revenue 2007). Supplements were later added in May 2008 and October 2009. The manual provides for a depreciated cost approach and cites California, Texas, New Jersey, and North Carolina tax laws in its findings. Recommended depreciation schedules are published within the manual. The 2008 supplement includes a cost approach for tri-vision billboards (Oregon Department of Revenue 2008, 8) and the 2009 supplement includes a cost approach for digital display billboards (Oregon Department of Revenue 2009, 9). Billboards are identified as real property for tax purposes (Oregon Department of Revenue 2007, 2).

Rhode Island. The tax code of Rhode Island provides that billboards are to be assessed as tangible personal property on a depreciated cost basis (*Rhode Island General Laws* 2010, section 44-5-12.1).

Texas. Texas taxes billboard structures for ad valorem tax purposes. Intangible personal property is not taxable (*Texas Tax Code Annotated* 2010, chapter 11, section 11.02(a)). Permits issued by governmental authorities are considered intangible personal property and thus are not subject to tax. (See *Gregg County Appraisal District v. Laidlaw Waste Systems, Inc.* [1995].)

The *Texas Property Tax Field Appraiser's Guide* issued by the Texas Comptroller of Public Accounts has specifically addressed the approach the government should take regarding ad valorem taxation of billboards. The guide states:

Due to the many difficulties inherent in the appraisal of billboards such as determining the owner of real property where the sign is located as well as the various terms, etc. of ground leases, we have decided that for appraisal purposes these structures will be treated as personal property. In order to maintain uniformity and consistency in evaluation of these structures in comparison to other classes of personalty, we will be using a modified trending approach. The valuation of

each sign will be determined by calculating the replacement cost new (RCN) and then deducting an amount for normal constant depreciation (straight line depreciation). (Office of the Texas Comptroller 2003, appendix L-4)

Utah. By statute, billboards are considered personal property for taxation purposes (*Utah Code Annotated* 2010, section 59-2-102). The taxable value is calculated by applying a percent good factor against the acquisition cost of the property (*Utah Code Annotated* 2010, section 59-2-108; Utah State Tax Commission 2007).

Virginia. The Virginia tax code is interpreted to include billboards as taxable personal property (*Virginia Code Annotated* 2009, section 58.1-3503). Such property is to be valued by means of a percentage or percentages of original cost (section 58.1-3503, ¶ 17).

Analysis of these state tax laws leads to an interesting observation. While virtually all of these states apply a depreciated cost valuation approach to billboard structures, the characterization of the billboard as either personal property or real property varies according to state. Therefore, it does not appear that the characterization of the billboard structure as either personal or real property for tax purposes makes a difference in whether the valuation is done on a depreciated cost basis of billboard structures.

IAAO Billboard Forum

IAAO presents a one-day forum on billboard valuation. The conference materials state:

The cost approach is the choice of most of the jurisdictions reviewed in the process of preparing this forum. ... Several states, including North Carolina, Florida, and Texas have developed cost guides for local assessors. They rely on a base price per square foot of billboard face and then apply adjustments based on the type of construction, height off the ground, and

amenities such as illumination, platforms, and aprons. Depreciation is then applied from a table. (IAAO 2003, 22)

The Adams Case

The key to the assessment of billboard property for tax purposes today is best expressed by the Wisconsin Supreme Court in the case, *Adams Outdoor Advertising, Ltd. v. City of Madison* (2006). The court summed up the crux of this case by stating:

Although the same appraisal methods may be used to establish fair market value for condemnation purposes as may be used to establish true cash value for purposes of personal property tax assessments, the property valued differs depending upon the purpose. In eminent domain, fair market value of a billboard is the price “the aggregate asset—the lease, permit, and sign—would bring in the marketplace.” (Vivid, Inc. v. Fiedler 1998) ... In contrast, an appraisal for personal property tax assessment purposes includes only the value of personal property and therefore excludes the value of the leasehold and billboard permit. ... Therefore, we conclude the same methods of appraisal may be used in eminent domain as are used in appraising personal property for tax purposes, provided care is taken to exclude from a personal property tax assessment any value attributable to elements other than tangible personal property. (Adams Outdoor Advertising, Ltd. v. City of Madison 2006, 823–824)

Recently, two members of the City of Milwaukee, Wisconsin, assessor’s office, Daniel R. Furdek and Peter C. Weissenfluh, published an article outlining their approach to billboard valuation (Furdek and Weissenfluh 2010). These authors offered a novel change to established practices of billboard property taxation by proposing to “create a separate tax parcel” for billboard property interests. They suggested that the “billboard company would be listed as the ‘owner’ of the billboard location and be assessed for the

full value of the sign, the permit, and the location where the billboard resides.” (Furdek and Weissenfluh 2010, 8)

The fallacy of this theory is that it is a hypothetical approach and does not reflect the actual state of the property interests. It appears to be unprecedented to propose carving up real property hypothetically to facilitate ad valorem taxation. Further, the authors base their valuation approach solely on referenced resources from the State of Wisconsin and also discuss the *Adams* case. Their approach, however, is not in accordance with the mandate of the Wisconsin Supreme Court in *Adams*. It fails to address the very crux of the case—the distinction between valuation of different types of property interests when appraising billboard property for taxation as opposed to condemnation.

Interestingly enough, these authors appear to follow the same approaches attempted by the assessor for the City of Madison in the *Adams* case. On remand to the trial court by the Wisconsin Supreme Court, the *Adams* trial court judge noted that the assessor had ignored the same distinction between tax valuation and eminent domain valuation determined by the Wisconsin Supreme Court regarding the proper approach for taxation of billboard property. As a result, the judge remarked:

[t]he problem with the City’s approach is it ignores the clear direction from the Supreme Court regarding the inclusion of permit value in the property tax ... the city’s effort to include permit value in its assessment of the billboard structures is fatally flawed. (Adams Outdoor Advertising, Ltd. v. City of Madison 2009)

In contrast to the hypotheticals expressed in the Furdek/Weissenfluh article, this article takes a real world view of the existing state of ad valorem property taxation of billboard property in this country to show that in compliance with the constitutional requirement of uniformity and universality in taxation, the

consensus of taxing authorities across the nation apply the approach that the Wisconsin Supreme Court has ordered the City of Madison to apply.

The Role of USPAP

The Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by the Appraisal Standards Board of the Appraisal Foundation provides appraisal standards for appraisers and users of appraisal services. USPAP was originally adopted by the Appraisal Standards Board on January 30, 1989, and has been subsequently amended.

Appraisal standards for mass appraisals that are prepared by tax assessors are covered in USPAP Standard 6 which states:

In developing a mass appraisal, an appraiser must be aware of, understand, and correctly employ those recognized methods and techniques necessary to produce and communicate mass appraisals.

A mass appraisal includes:

- 1. Identifying properties to be appraised;*
 - 2. Defining market area of consistent behavior that applies to properties;*
 - 3. Identifying characteristics (supply and demand) that affect the creation of value in that market area;*
 - 4. Developing a model structure that reflects the relationship among the characteristics affecting value in the market area;*
 - 5. Calibrating the model structure to determine the contribution of the individual characteristics affecting value;*
 - 6. Applying the conclusions reflected in the model to the characteristics of the property(ies) being appraised; and*
 - 7. Reviewing the mass appraisal results.*
- (Appraisal Foundation 2006, U-45)

Standard 6 applies to typical assignments that tax assessors encounter when appraising multiple parcels of similar use

for ad valorem purposes. In the *Adams* case, recognition of standard 6 is particularly critical to the proper valuation of a billboard property, as well as application within the jurisdictional exception rule.

It is important to note that the jurisdictional exception rule is recognized in standard 6 as well as other standards found in USPAP. The 2006 version of USPAP contains the following definition for jurisdictional exception: “an assignment condition that voids the force of a part or parts of USPAP, when compliance with part or parts of USPAP is contrary to law or public policy applicable to the assignment.” The jurisdictional exception rule further states that it “may apply to several sections of standard 6 because ad valorem tax administration is subject to various state, county and municipal laws.” Subsequent versions of USPAP are consistent with these statements, although the language has been slightly modified.

The Wisconsin Supreme Court decision in *Adams* does not provide the assessor for the City of Madison with any jurisdictional exception for the appraisal of a billboard property. Rather, the court stated that “the property valued differs depending upon the purpose.” (*Adams Outdoor Advertising, Ltd. v. City of Madison* 2006, 823–824) In an assignment regarding assessment of billboard property for the purposes of mass appraisal, the Wisconsin Supreme Court stressed that the permit, and the value associated with it, should be excluded from a billboard’s appraised value. Therefore, it would appear that no jurisdictional rule applies for the inclusion of the permit value and that the assessor did not conform with USPAP in the appraisal of the billboard property.

USPAP standard rule 6-2 addresses the requirement of identification of the client and intended users, the intended use of the appraisal, and the type and definition of value. As it relates to the *Adams* case, the identification of the intended use of the appraisal is

paramount. As the Wisconsin Supreme Court acknowledged, “the property value differs depending upon the purpose.” (*Adams Outdoor Advertising, Ltd. v. City of Madison* 2006, 823–824). Mass appraisal methods and techniques may have commonality with methods and techniques utilized by appraisers in many assignments. However, the client in a mass assessment assignment is the jurisdictional taxing district (city, county, or state) and the sole intended use is for ad valorem purposes, which must follow prevailing statutes and regulations established by the taxing district. Simply stated, a property tax assessment is not the equivalent of an appraisal prepared for eminent domain, mortgage lending, insurance, or other types of uses.

Standard 6-2(g) (ii) states, “when the subject is real property, identify and consider any personal property, trade fixtures, or intangibles that are not real property but are included in the appraisal.” (Appraisal Foundation 2006, U-45) In the *Adams* case, the assessor incorrectly included the permit value in his assessment. The permit value is an intangible asset, which is excluded from property taxation in many states, including Wisconsin.

Real estate appraisers, whether in government roles or private practice, are often required by state law to follow the requirements of USPAP. The *Wisconsin Property Assessment Manual* (Wisconsin Department of Revenue 2010) recognizes USPAP and the standards and practices set forth for assessors by the International Association of Assessing Officers as sources for professionally acceptable practices. In Wisconsin, the property assessment manual serves as the primary source for standards, and USPAP is applied with consideration for any jurisdictional exceptions. USPAP’s standard 6 specifically addresses the development of appraisals for taxation purposes. In ad valorem tax assessment,

compliance with USPAP meets the needs of the public and of the taxing entity because such appraised values will be consistent with recognized methods and techniques as well as statutory requirements in their marketplace.

Conclusion

The cost approach is the overwhelmingly uniform application for billboard structures in ad valorem taxing jurisdictions across the country. As the Wisconsin Supreme Court determined, the valuation of a billboard for eminent domain differs from the valuation of a billboard for ad valorem tax purposes because the type of property valued is different in each instance. In the case of eminent domain, the billboard property interest includes the structure, permit, and real property interests to comply with the constitutional requirement of fully compensating the owner of the billboard property interest for its entire loss. Whereas in ad valorem taxation, the goal is a fair and equitable tax uniformly and universally applied. As this discussion has demonstrated, to meet the criteria of equity and uniformity, only the billboard structure should be assessed.

Any departure from the uniform approach of valuing the structure would represent a radical change in billboard ad valorem taxation. It is important that the owners of this complex property interest pay their fair share of property taxes. But it is also important to ensure that a uniform and fair approach is applied universally to the taxpayers who own this type of property interest in accordance with state laws.

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