

FEATURE

Ontario announces property tax treatment of renewable energy installations

Ontario has announced new rules to offer greater clarity for the property tax treatment of solar and other renewable energy projects and to amend Regulation 282/98 under Ontario's primary property tax statute, the *Assessment Act*. The new rules took effect retroactively as of January 1, 2011.

The property tax treatment of renewable energy installations will appeal to property owners, project developers and municipalities. It will also aid the Municipal Property Assessment Corporation (MPAC) and ensure that property tax does not act as a disincentive to renewable energy generation, particularly where small-scale generation facilities are owned by persons not normally in the business of generation. The amendments apply to facilities that generate electricity using solar energy, wind energy or anaerobic digestion of organic matter.

For rooftop installations, assessment and tax classification of property will not change after the addition of a renewable energy installation on the rooftop of a building. For ground installations, the tax treatment will depend upon the size and location of the facility as well as who is conducting the generation, as outlined:

- *Generation as Ancillary Activity, Not by a Corporate Power Producer:* In this situation, energy generation is conducted by a person not ordinarily in the business of electricity generation, transmission or distribution, and the generation is ancillary to another activity on the same property. Small-size ground installations with a generation capacity up to 10 kW will not experience an increase in assessment or a change in tax classification. Medium-size ground installations with a generation capacity over 10 kW and up to 500 kW will be taxed based on the surrounding land use (e.g., residential, farm, multi-residential, commercial). Large-size ground installations with a generation capacity over 500 kW will be taxed based on the surrounding land use for the proportion of assessment up to 500 kW, and at the industrial rate for the proportion over 500 kW. For example, if a 560-kW wind tower is located on multi-residential property, the

assessment of the wind tower and associated land would be apportioned 89% to the multi-residential tax class and 11% to the industrial tax class.

- *On-Farm Anaerobic Digestion:* This is the process by which organic materials in an enclosed vessel are broken down by micro-organisms in the absence of oxygen. Anaerobic digestion produces biogas (consisting primarily of methane and carbon dioxide). Anaerobic digestion systems are also often referred to as biogas systems. Such facilities of any size, located on a farm and operated by the farmer, will be taxed at the farm rate.
- *Generation by Corporate Power Producer:* Consistent with historic treatment, these are ground-based generation facilities operated by entities whose primary business is the generation, transmission or distribution of electricity (corporate power producers). These facilities will continue to be taxed at the industrial rate.

continued on next page.

In this Issue

- | | |
|----|---|
| 9 | Feature Ontario announces property tax treatment of renewable energy installations |
| 10 | Feature Toolkit for Local Matters campaign in Alberta |
| 10 | Work Word |
| 11 | Resources: New & Noted |
| 12 | PILT: Payment in Lieu of Taxes Roundup |
| 13 | Coast to Coast to Coast |
| 13 | Quotable Quote |
| 15 | Feature Alabama lawsuit over property tax history disenfranchising black and poor students moves to appeal |
| 15 | Apropos |
| 16 | Quirky but true... |

- *Wind Turbine Towers:* Consistent with the treatment in place since 2005, these towers will continue to be assessed at \$40,000 per MW of installed capacity, except in the two situations noted above where assessment would not be affected by the installation (rooftop installations and ground-based installations up to 10 kW).

Further clarification of the taxation rates for renewable energy installations is anticipated, as all uncertainty regarding property tax impacts of renewable energy installation are not removed by regulatory amendments. The government anticipates there will continue to be situations where determining whether power generation is ancillary to the main activity on the property will be unclear. In addition, if there is a change in property classification, the effect will need to be considered.

Finally, the manner in which the value will be increased, and whether it is based upon the costs of installation, value to the landowner in terms of income from rent or a sharing of income from electricity generated, will be an important

consideration and a source of possible conflict with MPAC. With more complex arrangements and larger installations becoming common, project-specific attention needs to be given to the property tax implications of the amendments, and careful structuring of the arrangement between parties might be useful to minimize property tax consequences. A landowner or an electricity generator's right to appeal an assessment change is time limited and should be secured by contract.

See a table that summarizes the treatment described above at <http://news.ontario.ca/mof/en/2012/01/fact-sheet.html>.

Regulation 282/98 was also amended to provide clear policy regarding efficiency and conservation installations that use renewable energy technologies. As a result, assessments of properties with an active solar heating or cooling system or a ground-sourced geothermal heating or cooling system will not be increased. Ontario is committed to increasing wind, solar and bioenergy from less than 1% of generation capacity in 2003 to almost 13% by 2030.

FEATURE

Toolkit for Local Matters campaign in Alberta

A Local Matters Toolkit has been prepared for members of the Alberta Urban Municipalities Association (AUMA) when promoting new relationships between established municipalities and the Government of Alberta. Contents include a backgrounder, sample Q&As and key messages. For example, in the current reality, “municipalities can’t cover the costs of basic services out of their own property tax revenues.” In the new plan, the AUMA proposes that in “a new relationship based on clear authorities and shared respect, Alberta can enter a new era with local governments” that includes revamping grants “to address joint government initiatives while providing assistance to those municipalities with limited tax capacity to meet the needs of their communities.” The Local Matters campaign also aims to “restructure a decades-old system of multiple, complex grant processes” that acts like a lottery and promotes more efficient use of tax dollars by substantially reducing the administration of grants.

AUMA notes that while municipalities acknowledge the potential for raising property taxes to cover services, this raises other issues:

- *Accountability:* Approximately 30% of total property tax goes to the province. Municipalities want to provide core services to citizens and be accountable for expenses, but the link to value for services gets murky when a significant share of their only significant tax base goes to the province.

- *Fairness:* Municipalities believe that “ability to pay” is a key principle in a taxation system. However, increasing property taxes can affect seniors and other lower-income families disproportionately when compared to income. Local governments have taxing authority through property and business taxes. Are these mechanisms the fairest way to tax citizens?
- *Competitiveness:* According to Edmonton’s 2010 Residential Property Taxes and Utility Charges Survey, Alberta municipalities’ residential property tax on a single detached home falls in the middle. However, an increase of as little as \$50 per month could put Alberta’s municipalities near the top in Canada.

See www.auma.ca/live/AUMA/Local_Matters.

WORK WORD

rounding error, *n.* Who can be precise with all these billions?

From *A Devil’s Dictionary of Business Jargon*
by David Olive

FEATURE

Resources: New & Noted

A Tale of Two Taxes: Property Tax Reform in Ontario

By Richard M. Bird, Enid Slack & Almos Tassonyi

Jurisdictions around the world have been advised to implement major reforms to resolve local government finance problems. Ontario found it difficult to get property tax “right,” one reason being that residential property tax and business tax differ in their political dimensions, economic impact and administration. This book examines the broad reform of property tax in 1998 that “included introducing a full market value assessment, establishing a property tax system that would be widely accepted, and removing property tax reform from the provincial political agenda.” Over the past decade, Ontario was able to adopt a uniform, provincewide market value assessment system, but some objectives were not achieved and the new system may have ultimately weakened the role of the local property tax. “Revenue from the property tax alone is not sufficient for large urban areas to pay for the range and level of public services for which they are responsible,” the authors write. This detailed evaluation of reform in property tax policy and full market value assessment shows that while reforms are possible, they require very careful design and implementation, and sustained follow-up to succeed, especially in large metropolitan areas.

Softcover, 288 pages, \$30

ISBN: 9781558442252

Lincoln Institute

www.lincolninst.edu/pubs

Stadium Studies

By Bill Black

This book reviews the Halifax Regional Municipality’s Stadium Analysis Report, with Bill Black finding considerable challenges facing a potential stadium, the most important being that there doesn’t seem to be a viable business case. While the stadium would be too small to host almost all major sporting events, the proposed capacity and operations suggest that council might be aiming to host the 2015 FIFA Women’s World Cup Tournament. However, with much competition for that as well as a large hosting fee, there is also the stadium’s forecasted annual operating loss of approximately \$500,000. In spite of this, council decided to spend a further \$275,000 on another report, meaning that more than \$375,000 has been spent. Black writes that the Phase 2 report “is perhaps most noteworthy for what is not there. The more fundamental ques-

tions are ignored or are barely acknowledged.” The report uses “highly speculative” event and attendance figures after 2015 and “pro forma forecasts do not include the operating projections for major events.” The provincial government has already declined to participate, and it is unlikely the federal government would proceed without the province. Black writes that the evidence so far suggests that rushing construction of an expensive stadium is a very bad idea for HRM. See The Edge postings (“Stadium Stalemate” and “Stadium Studies – Phase 2”) at www.newstartns.com.

Value Capture and Land Policies

Edited by Gregory K. Ingram and Yu-Hung Hong

Softcover, 480 pages, \$30

ISBN: 9781558442276

Lincoln Institute

www.lincolninst.edu/pubs

Oil Spills and Property Values

By Tom Jackson

This 2-hour webinar (August 2010) offers critical insights on how appraisers can accurately value contaminated properties, especially in environmental disasters. The discussion identifies methodologies for valuing properties affected by environmental contamination, describes the effects that contamination may have on real property and compares methods used in the analysis of other adverse conditions.

\$35 members, \$75 non-members

Webinar_082510

www.appraisalinstitute.org/store

In Defense of the Cost Approach: A Journey into Commercial Depreciation

By E. Nelson Bowes

Includes the estimation of all three types of depreciation – physical deterioration, functional obsolescence and external obsolescence, with numerous examples, descriptive tables and graphs. Using humour and common sense, the author helps even the most sceptical practitioner feel confident using the cost approach.

\$35 members, \$45 non-members

Softcover, 121 pages

ISBN: 9781935328216

www.appraisalinstitute.org/store

PILT: Payment in Lieu of Taxes Roundup

Plans to relocate Joint Task Force 2 (JTF-2), the Canadian military's counterterrorism unit, from Dwyer Hill near Ottawa to CFB Trenton air base are going ahead. The Department of National Defence requires approximately 990 acres [396 ha] north and west of the base to construct the training facility for the special operations unit, estimated at \$300 million in addition to the nearly \$1 billion being spent on upgrades and new infrastructure at the base. **Quinte West** city council, the base's host community, expects to gain as much as \$17 million annually from the federal government as PILT.

National HealthCare Corporation (NHC), a 40-year-old, publicly traded company with net operating revenue of \$715 million and net income in 2010 of \$52 million, has asked Gallatin, **Tennessee** to give it a tax break to build a new senior living campus and 92-unit nursing facility. The company's director of development, Tom Campbell, said, "We're taking a risk of moving from one location to another, and your approval of this PILT program will ratify to our management that we're making the right decision." NHC owns, leases or manages some 80 long-term care centres in 10 states. The tax break would be phased out over eight years, with zero city property tax owed the first two years. NHC would pay 10% in year 3, and that figure would increase in annual increments until the company is fully on the tax rolls. The Economic Development Agency estimated the tax break at roughly \$457,000.

Legislators and officials from the **New Jersey** Office of Legislative Services will discuss whether the state constitution needs to be amended to allow legislation to require non-profits to make PILT payments if they purchase property currently on the tax rolls. Discussions include ramifications on towns where tax-exempt non-profits make up 15% or more of the tax base: the average town has a range of 4% to 7% of the base in tax-exempt properties.

A county court granted Rutland, **Vermont** a summary judgment and \$20,000 in delinquent taxes in a case filed by Vermont Railway (VR) claiming the city inappropriately taxed rented land. State law exempts railroad property, levying a 1% PILT split between the municipality and the state. While the law applies to leased land, it requires the land to have been appraised by the state. The Rutland site was never appraised, and the railroad never made payments. The judge wrote: "From the court's perspective, it is irrelevant why the properties were not appraised. In construing a tax statute, the court is required to follow the plain meaning of the statute." The judge also rejected an argument applying the exemption on eligible property, determining, "The statute requires actual appraisal, not potential inclusion in the railroad property tax base at the state level." VR president David Wulfson said the company

would appeal: the railroad just bought one parcel and would continue to lease the other, which included an agreement to pay taxes on the property. "The decision is wrong and we'll take it to the end until we get a correct one."

A group of Princeton, **New Jersey** borough and township residents are challenging approval of a new arts and transit zone for Princeton University's \$300-million project. The lawsuit charges that president Shirley Tilghman stated the university would not renew its PILT agreement if the borough did not approve the proposal. The suit alleges the zoning deal included the university's paying the \$500,000 transit study, increasing its annual borough PILT by \$500,000 and making a \$500,000 PILT payment to the township, in effect revealing the involuntary nature of voluntary PILTs.

The Brown University Stop Tax Exempt Deals (BUSTED) initiative is alive and well on Facebook, calling for "an immediate moratorium on the purchase of property by all tax exempt institutions" and establishing a PILT payment of 50% of assessed valuation for such properties. Providence, **Rhode Island's** budget included \$8 million in new revenue from non-profits, but nearly three quarters through the budget year, agreements with targeted hospitals and colleges had not been reached. Brown University offered "to increase the \$4 million in voluntary and property tax payments we already make annually to the city by providing an additional \$10 million over five years," as noted in a January letter from president Ruth Simmons. She called Providence Mayor Angel Taveras's rejection of Brown's offer "surprising and disappointing," but "we could not simply provide unrestricted funds to address a structural deficit that had accrued for many years." Simmons noted that colleges and universities account for 8.1% of tax-exempt property in Providence, "not the 40% often cited." See www.golocalprov.com.

The Museum of Fine Arts in Boston, **Massachusetts** has been almost entirely privately funded since its 1876 opening, unlike peer museums that receive millions in financing from their cities, said its director, Malcolm Rogers. Within four years, a new formula suggested by Boston's PILOT [PILT] Task Force would set payment at \$1,025,000 in four years (up from approximately \$55,000 per year) – the estimated tax a cultural organization would pay if it were a taxable entity, less a 50% community service credit. Rogers cites quantifiable annual services and benefits provided at no cost to the city that total approximately \$2.1 million and non-quantifiable benefits, including arts programming for 20,000 children and teachers and activities for young hospital patients. The Institute of Contemporary Art was asked to pay \$17,000 this year, with an increase to \$86,000 by 2016. Since the 1970s, more than 30

charities have made annual payments towards the cost of public services of \$34.8 million for 2011 (1% of the city's annual budget). The mayor's task force calculated that if the city's 12 big hospitals and 16 universities paid commercial taxes, \$345 million would have been raised in 2009. Some 52% of land is not taxable, being occupied by public buildings or those of tax-exempt organizations. For the recommendations and the task force's final report, see www.cityofboston.gov/assessing/pilot.asp.

QUOTABLE QUOTE

“ Loyalty to the country always.
Loyalty to the government when
it deserves it.”
– Mark Twain

Coast to Coast to Coast to Coast

Canada

British Columbia

The total value of properties in **Burnaby** rose from \$57.8 billion in July 2010 to \$63.4 billion in July 2011, with average values in the Buckingham Heights neighbourhood up approximately 25%. That neighbourhood was also assessed as having Burnaby's most expensive homes, with average values up from \$1,380,000 to \$1,842,000.

Alberta

The province must start crafting new ways to finance cities as municipal debts continue to escalate, said Linda Sloan, Edmonton councillor and president of the Alberta Urban Municipalities Association. “Edmonton and Calgary owe more than \$4 billion, that number is growing fast and it's approaching the limits set by provincial law,” she said. In 2009, Calgary's debt was more than \$2.5 billion, while Edmonton's was approximately \$1.5 billion. Sloan said that property taxes and grants are no longer sufficient sources of income, while cities are also fixing infrastructure.

The total value of building permits in **Calgary** rose to \$4.54 billion from \$2.91 billion in 2010. Figures also indicated the total value is 10% higher than the average of the past five years, at \$4.12 billion compared to the 10-year average of \$3.58 billion. There were 9,812 permits for new residential units in 2011 compared with 7,026 in 2010, and \$438 million in new commercial construction permits compared to 2010's \$151 million. Carol Oxtoby, president of the Canadian Home Builders' Association – Calgary Region, said figures might have been skewed by some larger projects such as airport development and a university residential tower, but “this is a sign that the economy is recovering.” The highest total value of permits was recorded in 2007, at \$5.52 billion.

Ontario

(Note: Acronym MPAC is *Municipal Property Assessment Corporation*)
Toronto's staff recommended that the remaining \$6.3 million

of a property assessment windfall be committed to a tax-rate stabilization reserve after it was disclosed the city's forecasted surplus for 2011 grew from \$139 million to \$154 million based largely on land transfer tax revenues. The surplus was seen to counter Mayor Rob Ford's rationale for imposing more than \$88 million in service cuts as part of the proposed 2012 budget. Staff recommended that a new fee of \$35 apply for each ownership change on a property tax account, expected to generate \$1.146 million in new revenue. The 2012–2021 Capital Budget and Plan Strategy accommodates Toronto Transit Commission's recommended 10-Year Capital Plan; achieves a balance between maintaining existing city assets and addressing service gaps; assumes that monetization and new federal–provincial funding targets will be met; and estimates that debt charges will be moderated over the life of the plan, especially over the first five years. See 2012 Property Tax Rates and Related Matters and budget details at www.toronto.ca/budget2012/index.htm.

Nova Scotia

Property values are up 6% said the Property Valuation Services Corporation, mailing 590,000 notices totalling \$89.6 billion in residential and commercial properties, based on 2010 market values. Most residents will not see taxes rise more than 3.9%, the provincial cap set for 2012.

People shouldn't have to pay twice for assessment information, said Bill McMullin of ViewPoint Realty after the provincial agency in charge of assessment proposed charging his company \$14,000. “It should be available free because it's information that was already paid to be collected by the constituents who own property,” he said. Russ Adams, vice president of corporate services, Property Valuation Services Corporation (www.pvsc.ca), which is funded by the province's 55 municipalities, said it provided information free under a year-long pilot “but we're not having the taxpayer subsidize his private business.” ViewPoint is an online brokerage that charges sellers \$900 to list homes on its website and the MLS.

USA (NB: All figures in US\$)

Nevada

In accordance with Nevada Revised Statute 361-300, the annual list of property values and taxes was published in **Las Vegas** newspapers in December. The Assessor's Office appraised more than 728,000 parcels in Clark County, including businesses, aircraft, billboards and cell towers, with the majority residential. Besides mailed notices, the 2012/2013 assessment list was published in newspapers at a cost of \$581,000 to the Assessor's Office. See <http://gisgate.co.clark.nv.us/secroll/secroll.asp>.

New Jersey

Homeowners paid an average of 2.4% more for property taxes in 2011 in the Star-Ledger's analysis of taxes in all 566 New Jersey towns. It showed the average property tax bill was \$7,758 last year, an increase of approximately \$182 from 2010, with 82% of the towns having some increase. Average property values for residential homes and farmsteads were calculated for every municipality and used in combination with data on tax levies to determine the average property tax bill for each municipality. In total, towns, counties and schools collected about \$25.6 billion from taxpayers in 2011. Governor Chris Christie made reining in the state's highest-in-the-nation property taxes a goal, capping the growth in property taxes at 2% starting January 2011. For a CSV file for 2011 property tax bills from each of New Jersey's municipalities, see www.nj.com/news/bythenumbers.

Iowa

Governor Terry Branstad has revamped his plan to reduce commercial property taxes. The plan now includes a new inflation-rate limit on the property tax increases that cities and counties may charge. Commercial property owners currently pay taxes on 100% of their property's valuation. Last year's plan, which called for gradually reducing that rate to 60% over the next five years, is now being adjusted to phase down over eight years.

Under Branstad's plan, the state would provide \$50 million in the first year, \$100 million the next and gradually increase funds coming from general state revenue to \$240 million by the eighth year as the property tax decreases. The proposal also includes a trigger in later years that would delay the tax cut if state tax collections didn't grow as planned. The governor has warned that state commercial property taxes are out of line with neighbouring states.

The House Ways and Means Committee began reviewing details of the complex proposal, along with a plan suggested by republicans, neither of which has been supported by the Iowa League of Cities, the Iowa State Association of Counties or other organizations representing local government. Representatives from those groups described concerns, focusing on the bills' limitations on municipalities' ability to

raise revenue through property taxes and the uncertain effects on their budgets.

New York

Owners of One Niagara claimed the assessment on their **Niagara Falls** property is still too high, citing an appraisal report suggesting that Gar Associates Inc., hired by the city, agrees the value of the Rainbow Boulevard nine-storey building should be \$2.6 million. After the property's 2004 purchase, the new owner transferred control of the building to an ownership group, whose assessor estimated the building was worth \$640,000 and that its taxes should be reduced by 80%. The city said the property was assessed in 2009 at \$4.6 million and that its value was reduced as a result of challenges to \$4 million in 2010, \$3.5 million in 2011 and \$3 million in 2012. The city also claims that One Niagara owes \$2.09 million in taxes, interest and penalties dating back to 2006. The Niagara Gazette noted that Gar Associates wrote that determining the building's true value was affected by circumstances with management as well as the reporting of information about revenue and expenses – namely, that the income stream from the master lease agreement was “somewhat deceiving and difficult to analyze.” As a result, Gar officials said valuation was not subject to the lease agreement but was based on “assumptions of prudent management and operation of the parking lot, first floor and a portion of the ninth floor for revenue generation.” The Niagara County Industrial Development Agency's board voted to table an application for incentives that would allow One Niagara's owners to operate tax free for at least five years while they pursue a \$6-million renovation project. Chair Henry Sloma said their tax arrears is a “major issue” in the project's moving forward.

California

In an assessment appeal for a refinery, Chevron and **Contra Costa County** accused each other of using deeply flawed methodology. Chevron seeks reductions up to \$73 million in property taxes it paid from 2007 through 2009. The assessor raised the refinery's annual taxable value from \$3.1 billion to \$3.4 billion during the three-year period, while Chevron estimated its value at \$1.1 billion to \$1.8 billion. Chevron's lawyer alleged the assessor set predetermined and arbitrary refinery values with a lack of documentation. The lawyer for the county defended the assessor and described a pattern of Chevron's “skilled contrivances,” reducing refinery revenues by half when it included costs for a new hydrogen plant that was never built. Chevron also sought to close portions of the final arguments to the public, a request that the appeals board denied, declaring the dispute a matter of great public interest. The board is expected to make a final decision in the spring. In a previous appeal, the board awarded Chevron a partial refund of its 2004 to 2006 taxes; the company filed a lawsuit challenging that reduction as insufficient and appealed its 2010 to 2011 values.

FEATURE

Alabama lawsuit over property tax history disenfranchising black and poor students moves to appeal

A lawsuit over the fairness of Alabama's property tax system is headed to a federal appeals court after a judge ruled the state's property tax system is not unconstitutional, rejecting claims filed on behalf of schoolchildren that the current system purposefully disenfranchises poor counties, harming a disproportionate number of black students. Though the judge ruled in the state's favour, the Attorney General's office also filed notice to appeal, with lawyers stating it was "a precautionary measure." The 854-page decision by US District Judge Lynwood Smith in India *Lynch vs. State of Alabama* said that while there are flaws in the approach to funding schools, the plaintiffs did not prove the system violates children's civil rights, and although the constitution is filled with racist language and attitude, he could not conclude the tax code was a result of racism. Lasting four weeks with 36 witnesses and 700 exhibits, the trial covered much of Alabama's history.

... legislation protected interests of large landholders, guaranteeing some of Alabama's wealthiest citizens paid some of its lowest taxes

Smith wrote, "Like it or not, Supreme Court precedent compels a conclusion that the property tax embedded in Alabama's 1901 Constitution and subsequent amendments does not offend the 14th Amendment's Equal Protection Clause." He said state powerbrokers see little interest in high-quality education statewide, because children of powerful constituents are generally enrolled in exclusive suburban or private school systems with large local tax bases. "The children of the rural poor, whether black or white, are left to struggle as best as they can in underfunded, dilapidated schools," he wrote, also finding that the authors of Alabama's current property tax system acted out of greed and concern for looming court-ordered property tax hikes in the early 1970s.

State voters approved two measures that set up property tax classes and special tax rates for large agricultural and farmland owners. "The [Alabama] Farm Bureau, with assistance from an extraordinarily popular governor, was able to ensure the enactment of legislation that protected the interests of the large, rural landholders, guaranteeing that some of Alabama's wealthiest citizens paid some of its lowest taxes," Smith wrote, referring to Governor George Wallace. In 1972, the Alabama Legislature and voters approved a system of classification for

property taxes that taxed farms, timberland and homes at the lowest rate, 15%. In 1978, legislation and a state referendum cut rates to 10% and added a current-use provision, further shielding agriculture-related properties.

Dr. Wayne Flynt testified regarding more than 100 years of Alabama history, saying that taxes on slaves before the Civil War made up approximately 70% of revenue. "Alabama politics swings to either the politics of class or the politics of race," he said. By around 1850, Alabama cotton comprised 23% of all US cotton exports, giving tremendous wealth and power to plantation owners. After 1865, Alabama's population was approximately 45% black; with emancipation, there were some 40,000 black schoolchildren. The 1901 constitution capped state property tax at 6.5 mills, a reduction of 1 mill from the 1875 constitution. Promising to end corruption, a legislature and governor were elected in 1874 that immediately moved to roll back education funding. Flynt testified that in 1891, Alabama approved measures that allowed county officials to divert funds intended for black schools to white schools, and smaller white landowners became increasingly frustrated with a system that kept taxes low on large planters' properties. The aftermath led to poor schools for blacks and many whites, a state embarrassment at the start of the First World War, when

Continued on next page.

Apropos

The Alabama Farmers Federation estimates the state has 9 million acres [3.6 million ha] of farmland, with 48,500 farms. The case is also of interest to the Alabama Forestry Association, which estimates that 70% of the total state land area is timberland, approximately 23 million acres [9.2 million ha]. If in appeal "the plaintiffs are successful, forest land would be taxed at 10% of full market value, not 10% of current use value. ... If a landowner has property near a rapidly growing metropolitan area, this could mean going from \$490 per acre to \$5,000–\$10,000 per acre."

See www.alaforestry.org and click on AFA Newsroom > Headlines.

a large number of men were rejected because they were illiterate. It wasn't until the 1930s that the first high school for black students opened in Alabama's capital, Montgomery. When the 1968 state constitution created a school board providing funds for public education, white Alabama residents were frustrated by increased property taxes and government corruption.

Through much of the 20th century, Alabama's property tax system was based on different assessments across different counties. Urban counties assessed property at nearly 30% of market value, while farm-rich rural counties were assessed far lower. The state's median assessment was 17% in 1970, but a federal lawsuit led federal courts to order a higher uniform assessment and directed the state legislature to resolve the problem. The state then taxed much agricultural and timberland at an even lower rate, dropping it to 10% of fair market value, a rate approved in 1972 and again in 1978. "Lid amendments" added under Wallace created classes for property taxes.

Alabama property owners pay the lowest property taxes in the country. Department of Education figures for fiscal year 2010 show a difference of 10 mills between affluent areas versus poor areas: for Huntsville schools, the equivalent was \$18 million; for Lawrence County schools, \$2.9 million; and for Sumter, \$1.1 million. Court found that even if the original intent of the constitution and early tax measures was race-based, recent property tax amendments were not, and enough time has passed to extinguish motive.

The decision contains analysis of the tax laws and school demographics, ending with a few lines from Bob Dylan's 1962 song, "Blowing in the Wind." See the March 14, 2008 27-page complaint at http://nces.ed.gov/edfin/pdf/lawsuits/Lynch_v_AL.pdf. See the 854-page ruling, filed October 21, 2011, Case 5:08-cv-00450-CLS Document 294 at http://knightsims.com/pdf/11_10_25/Doc_294_opinion_on_merits_10-21-11.pdf. The website of the plaintiffs, Knight & Sims Vs. Alabama, is at http://knightsims.com/lynch_v_alabama.php.

Quirky but true...

Nathan Davis, the municipal attorney in Albany, Georgia, said the city issued 187 citations for saggy pants, generating \$3,916 in fines in less than a year. The ordinance bans anyone from wearing pants or skirts that expose skin or undergarments 3 inches [7.62 cm] below the top of the hip. First-time offenders receive a \$25 fine, with repeat offences up to \$200, including 40 hours of community service in addition to or in lieu of a fine. See **Sec. 38-147 – Public indecency prohibited** at <http://library.municode.com/index.aspx?clientId=14374>.

FOCUS MUNICIPAL ASSESSMENT & TAXATION

EXECUTIVE EDITOR
Peter A. Milligan
Associate Counsel
Assessment and Property Taxation
Miller Thomson
Toronto, Ontario

MANAGING EDITOR
Cynthia Martin
cmartin@longwoods.com
Longwoods Publishing Corporation

PUBLICATIONS BOARD
Chair
Susan de Avellar Schiller, AICP/
MCIP, ACR
Ontario Municipal Board

Robert Butterworth
Vice Chair, Ontario Assessment
Review Board

Ron Cust, Director of Legislative
Projects for Alberta Municipal
Affairs

Charles J. L. Hardy, B.Sc., FRICS,
AACI, Altus Group

Connie Fair
Chief Executive Officer,
British Columbia Assessment
Authority

Lawrence Hummel
Vice President, Property Values
Municipal Property Assessment
Corporation

Grace L. Marsh, CMM I, CMTC
DuCharme, McMillen & Associates
Canada, Ltd.

Carla Nell, MA, AIMA, PLE, CEI
Vice President, Tax Policy
MTE Consultants Inc.

Diane J. Ross, B.A., LL.B.
Ministry of Finance, Ontario

EDUCATION BOARD
Chair
Paul Sloggett, IMA
Education Coordinator, Seneca
College

PUBLISHER
Anton Hart

COPY EDITOR
Francine Geraci

DESIGN AND PRODUCTION
Yvonne Koo
Jonathan Whitehead

ASSOCIATE PUBLISHER
SUBSCRIBER SERVICES
For address/contact information
changes, please contact
Barbara Marshall
bmarshall@longwoods.com

MAILING ADDRESS:
260 Adelaide Street East
No. 8, Toronto, Ontario
Canada M5A 1N1
Telephone: (416) 864-9667
Facsimile: (416) 368-4443
Email: cmartin@longwoods.com
Internet: www.longwoods.com

A FOCUS Publication
Twelve issues per year
ISSN 0711-0599 Printed in Canada

© 2012 Longwoods Publishing Corporation™. All rights reserved. No part of this work covered by the publisher's copyright may be reproduced or copied in any form or by any means without the written permission of the publisher, who will provide single-duplication privileges on an incidental basis and free issues for workshops and seminars.

This tax letter is printed on recyclable paper.

What our readers think of Focus publications is important to our sanity. If you have any comments, please take a moment to send us a note. Information contained in this publication has been compiled from sources believed to be reliable. While every effort has been made to ensure accuracy and completeness, these are not guaranteed. It is an express condition of the sale of this legal letter that no liability shall be incurred by Longwoods Publishing Corporation™, the editors or by any contributors. Readers are urged to consult their professional advisors prior to acting on the basis of material in this legal letter.

Unauthorized duplication of this document is against the law. For single or multiple subscriptions, please contact the publisher.