

community watch

MONITORING LEGAL ISSUES THAT AFFECT MICHIGAN MUNICIPALITIES

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Prior Years' Tax Assessments Protected by Court of Appeals Decision in *Leahy v Orion Township*

By Stephanie Simon Morita

The amount of property taxes paid is based upon a property's taxable value. Taxable value is determined by taking the prior year's taxable value and subtracting losses, then multiplying that figure by the lower of the rate of inflation or 5%, and lastly, adding for additions to the property. If a property owner successfully appeals a determination of taxable value, thereby lowering taxable value, it will reduce tax liability for subsequent years. Generally speaking, all taxable value appeals have to be filed by June 30 of the year of assessment unless a mutual mistake of fact or clerical error is claimed.¹ The recent decision of the Michigan Court of Appeals in *Leahy v Orion Township*,² provides clarification as to the law and protects prior years' taxable value assessments.

In *Leahy*, the property owner in a 2003 tax year case attempted to receive a refund for an alleged miscalculation of taxable value assessments for the 2000 through 2002 tax years. The property owner argued the years 2000 through 2002 taxable values should be recalculated in order to correctly determine the year 2003 taxable value assessment. The property owner also claimed he should be refunded for the alleged incorrect calculations in years 2000 through 2002 because they amounted to a "mutual mistake of fact," and under statute, the Michigan Tax Tribunal was allowed to go back three years to correct the mistake. The respondent Township contended that the property owner failed to timely appeal the assessments for tax years 2000 through 2002 to the Tax Tribunal, and therefore the Tribunal was without jurisdiction to recalculate taxable values for those years. The Township also argued there was no mutual mistake of fact or clerical error.

The Court of Appeals found the property owner's refund argument to be "meritless." The Court also ruled that the property owner had failed to properly appeal the years 2000 through 2002 taxable values and was now precluded from attacking the assessments by way of the 2003 case. In support of this ruling, the Court noted that the property owner had

SECRET WARDLE NOTES:

On January 24, 2006, the Michigan Court of Appeals issued a decision protecting previous years' taxable value assessments from attack in the case of *Leahy v Orion Township*.

Based upon the *Leahy* decision, assessors should be confident that their assessments and calculations as to taxable value will be upheld, and are not subject to attack if the property owner does not timely file an appeal with the Tax Tribunal. Furthermore, a property owner will not be allowed to bootstrap prior years' assessments into the current year's appeal where there was no timely appeal to the Tribunal as to the prior years, or where there were timely appeals, but the property owner did not continue to appeal the adverse decisions through the courts and the time for appealing has expired.

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received adverse decisions in the Tribunal, Circuit Court and the Court of Appeals as to the prior years, had not continued with the appeal of those adverse decisions, and the time for appealing had passed. Most importantly, the Court found that there was no support, in either statute or in case law, which required the recalculation of taxable value assessments for the years prior to the current year under appeal. Also, because the prior years were the subject of prior cases where the time for appealing had expired, the Court concluded that they could not now be collaterally attacked in the current and subsequent litigation.

For municipalities, the decision in *Leahy* is important because it clearly states that unless properly and timely appealed, a prior year's taxable value stands as is and is not subject to attack. While there have been unpublished cases, including the *Eagle Glen Golf Course v Surrey Twp* decision upon which the property owner relied, there had not yet been a published decision directly involving the issue. The Court, in explaining that the *Eagle Glen* case did not support the property owner's argument, wrote that the "case stands for the proposition that, once an assessment appeals period runs, the assessed value is no longer subject to change. Accordingly, the fixed assessment value must be used where, as here, a statutory assessment formula calls for the use of a now-unchallengeable assessed value." As a result of *Leahy*, there is now precedential case law which supports the "unchallengeable" status of taxable value assessments not timely appealed and not claimed to be the result of a mutual mistake of fact or clerical error.²

¹ Secrest Wardle represented Orion Township in the appeal of this case.

² Effective February 3, 2006, MCL 211.53b was amended to allow for corrections of "qualified errors," which includes among other specified errors, mutual mistakes of fact and clerical errors.

The Secrest Wardle Municipal Practice Group includes a tax subgroup, consisting of several attorneys who specialize in advising our municipal clients on matters involving property taxation, including real and personal property valuation, tax exemptions, Headlee and Proposal A limitations, and millage proposals/ballot language. These attorneys regularly appear before the Michigan Tax Tribunal and the appellate courts to defend challenges to the property tax assessment decisions of local assessors.

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