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A Legislative Update for Township Officials

Personal property: Sometimes details are vitally important



The House Agriculture Committee recently held a hearing on whether equipment used by private companies to install drainage tiles in farm fields should be exempt from personal property taxes based on its use as agricultural equipment. During that hearing, one of the committee members asked questions to an assessor, who was testifying on the legislation, about the current procedures in

determining the difference between personal and real property on a farm.

The question from the legislator, who is an active dairy farmer, highlighted one of the challenges when assessing property: sometimes property doesn't fit into nice and neat categories. In this particular situation, the legislator had some particular equipment that he thought should be classified as personal property and thus exempt from taxation. The assessor described the rules used by the assessing community to determine if the property is actually considered real property.

The fact that all property does not fit neatly into different categories was highlighted just a few years ago when the Legislature decided to exempt industrial and commercial personal property from certain school taxes. For decades, local business owners paid little attention to the assessing classification of each piece of personal property that they owned. They were more concerned with the assessed value, not how it was classified. That all changed when the Legislature exempted industrial personal property from 24 mills of taxes each year and then exempted commercial personal property from 12 mills. All of a sudden, this very obscure assessing concept of classification became the most important issue on the property tax statement. Business owners in every corner of the state started questioning whether an item was actually used for industrial processes and not used for commercial activities as was noted on the assessment statement.

The issue overwhelmed the statewide appeal process. At one point, the state basically shut down the appeal process because it wasn't able to handle the scope of the work. The issue of how to classify a computer that might be used for accounting in the front office of a small manufacturer became an important issue. In the past, it made little difference because

the owner still paid the same amount in taxes.

The question from the legislator, who has a dairy farm, gives us some insight into a world where all personal property is exempt from taxation. Some issues have already been settled. At one time, buildings on leased land were considered personal property. That law was changed years ago in anticipation of eventually eliminating personal property taxes. However, there will likely be many more situations where closer study will be needed to determine whether something is real or personal property. It will also likely mean another round of business owners taking a very critical look at how their property is assessed to make sure that all possible items are considered personal instead of real. This is just one of the issues that must be acknowledged during the debate to eliminate personal property taxes. ■

Michigan township officials attend NATaT conference in Washington, D.C.

Approximately 20 township officials, lead by 2011 MTA President Jack Randolph, attended the National Association of Towns and Townships (NATaT) Conference on Wednesday, Sept. 7 and Thursday, Sept. 8 in Washington, D.C. They joined approximately 300 other town and township officials from mostly other Great Lakes states to hear updates on federal issues of importance to local officials and to lobby members of Congress on key issues of concern.

The conference's opening session took place on Wednesday morning as attendees heard from Assistant to the President and Director of Domestic Policy Council Melody Barnes. In her capacity, she is leading the newly formed White House Rural Council and informed those in attendance about activities the administration is pursuing to help rural America. Some of the initiatives include efforts to increase the number of college graduates, continue the expansion of broadband and to lower infant mortality rates in rural areas. She indicated that the Obama Administration values the work that town and township officials are doing and they want to listen and develop a closer partnership.

Following Ms. Barnes' comments, NATaT staff conducted an issues briefing on key items in which attendees would be lobbying on Capitol Hill

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the next day. These included the Volunteer Protection Reauthorization Act (H.R. 2353/S. 933), bills to exempt the first \$600 in compensation or other benefits that are received by volunteer firefighters and several issues related to transportation funding. The Federal Affairs Roundtable followed with panelists addressing other important federal issues such as the proposed new storm water rules being drafted by the Environmental Protection Agency, security of pipelines carrying hazardous materials and other homeland security issues.

Federal Emergency Management Agency (FEMA) Administrator W. Craig Fugate gave a keynote address following lunch and mentioned that he came from small town America and understands the concept of "neighbor helping neighbor." He expressed that traditionally FEMA has operated from the standpoint of making everyone conform to the way the organization operates and said that model does not work. He indicated that FEMA has to adapt and fit to what the customers (state and local governments) need in crisis situations. He empathized that teams are now sent in to support states and locals in disaster situations even before a state governor formally asks for a federal disaster declaration to be declared. Under this new model, FEMA can provide assistance before a state becomes overwhelmed.

The rest of the afternoon consisted of concurrent sessions addressing: *Preparing for Disaster in Your Local Community and Best Practices for How to Respond When Disaster Strikes* and *Popular Federal Grant Programs for Towns and Townships & Useful Grant-Writing Tips*. The final session of the day had concurrent sessions on *How to Motivate, Recruit and Retain Volunteer First Responders* and *Using Social Media in Your Towns and Townships*. Of particular note with the last session was how township officials can communicate directly with residents by capturing email addresses rather than relying on local media. By using emails and various forms of social media (i.e. Facebook, Twitter and LinkedIn) you can provide information of value to your citizens in a timely, cost-effective manner.

Thursday morning started off with the traditional state breakfasts. The Michigan breakfast featured U.S. Sen. Debbie Stabenow's Chief of Staff Amanda Renteria providing some comments and addressing many of the issues in which Michigan attendees were there to lobby. Later in the day, Michigan attendees then met with their own U.S. representative. These included meetings with Reps. Tim Walberg, Fred Upton, Dave Camp, Candice

Miller, Mike Rogers and Dan Benishek and/or their staff members. Those meetings went very well as most members seemed sympathetic to the issues that were covered during the meetings. Michigan is fortunate to have two members (Camp and Upton) on the 12-member "super committee" established under the debt ceiling agreement to come up with \$1.5 billion in federal budget savings.

Late in the day on Thursday, conference attendees enjoyed a reception hosted by the delegation from Minnesota as this year's featured state.

We at MTA wish to thank those township officials who made the effort to attend this year's NATaT conference and to help lobby on federal issues of importance to townships. We look forward to next year's format, which will be a one-day "fly in" to focus on lobbying members of Congress rather than the traditional conference. The 2012 fly in will occur on March 28, so it's already time to mark your calendars for this event. ■

House looks to solve assessing issue

When Proposal A was passed in 1994, it required extensive follow-up legislation in order to implement its many new assessing issues. One particularly awkward issue involved the assessment of commercial rental property when using an income approach to determine property value. Under this method, assessments would go down as vacancies occurred and then went back up as offices or strip malls refilled. However, this large swing in values didn't work very well with the new constitutional requirement that no property could increase in taxable value at a rate greater than inflation.

In working through this issue, the Legislature decided to make changes in occupancy an "addition" or "loss" when calculating property values. This exempted the property from the constitutional limitations on taxable value increases. The issue was eventually litigated through the courts and the state Supreme Court finally ruled in a case named *W.P.W. Acquisition Company v. City of Troy* that this practice of classifying occupancy increases as an addition was unconstitutional. However, the court did not render a ruling on the other half of the equation, that any decrease in occupancy was considered a loss for assessing purposes.

As a result of the court decision, any time a building sees a decrease in occupancy, both the state equalized value (SEV) and the taxable value should be reduced by the assessor. This creates a very beneficial treatment for this type of property compared to any other form of property. MTA, along with other local government organizations, has been working for years to rebalance this assessing equation.

The House Tax Policy Committee has reported legislation that would rebalance this equation. House Bill 4602 is sponsored by Rep. Rudy Hobbs (D-Southfield). HB 4602 would simply strike the language that remained untouched by the courts. Decreases in occupancy would no longer be considered losses. Decreases in occupancy would still mean a likely decrease in a property's SEV, but it would only decrease the taxable value in situations where the SEV drops below the current taxable value. Under the current interpretation, the taxable value always goes down, even if it is just a small percentage of the current SEV. MTA has supported this reasonable solution to this problem. ■



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Legislature sends 2012 presidential primary bill to governor

Both the Senate and the House have now passed legislation to formally designate Feb. 28, 2012, the presidential primary election date. Senate Bill 584, introduced by Sen. Randy Richardville (R-Frenchtown Chtr. Twp.), passed both chambers mostly along party lines, with most Republicans supporting and all Democrats opposing the legislation. The bill now awaits the governor's signature.

Similar to the 2008 presidential primary election, each elector will have to indicate on a form prescribed by the secretary of state which political party ballot he or she wishes to use. That information would then not be exempt from disclosure under the Freedom of Information Act. Under the bill, the secretary of state will develop a procedure for local clerks to use in order to keep a separate presidential primary record that would contain the printed name, address and qualified voter file number of each elector, and the political party ballot selected by that elector.

One of the greatest challenges will be dealing with overseas and military voters. The secretary of state is charged with developing a procedure for notifying military personal and other voters who may be overseas of the need to select a party in order to receive a presidential primary ballot. The party designation requirement creates even greater concern that these voters may not be able to comply with requirements in time to cast their ballot.

The bill also stipulates that within 71 days of the presidential primary election, the secretary of state would need to make available to the public a file of the records for each political party in an electronic format. Prior to this deadline, the secretary of state would set a timeline for county, city and township clerks to submit the required data. The secretary of state and local clerks would then be required to destroy the information indicating which political party ballot each elector selected immediately following the expiration of the 22-month federal election records retention period.

Democrats have indicated the primary is a waste of an expected cost to the state of \$10 million as the nominee for the Democrats will almost assuredly be President Obama and therefore the primary would really only benefit Republican candidates even though there will be a Democrat Party ballot on Election Day. Democrats actually plan to select their delegates through the caucus method in May 2012. Prior to final passage of the bill, several efforts by Democrats to alter the bill were proposed. Attempts were made in the House Redistricting and Elections Committee to cancel the primary and to make the Republican Party pay for the costs of the election. Both of these failed along party lines. An additional effort to include in the bill the pre-registration of 16-year-olds, early voting and no-reason absentee voting was also defeated along party lines.

Prior to House consideration, Sen. Steve Bieda, (D-Warren) offered an amendment on the Senate floor to provide for no-reason absentee voting, but the amendment was defeated, again mostly along party lines.

MTA has long supported no-reason AV voting.

Finally, the bill does put into question whether Michigan Republicans will have a full delegation to their national convention next year. Under Republican National Committee rules, Michigan could lose one-half of its delegates to the Republican National Convention for conducting the presidential primary this early in the process. It remains to be seen if those penalties would actually be applied once the presidential primaries have concluded. ■

500-hour work rule for police rescinded



On Sept. 9, the Michigan Commission on Law Enforcement Standards (MCOLES) reversed course on implementing a rule approved several years ago that would have required all law enforcement officers in Michigan to work at least 500 hours annually in order to maintain certification as a police officer. The new

rule, which clarifies that MCOLES is now not requiring a specific number of hours to be worked, was scheduled to go into effect in 2012. MCOLES approved resolution 2011-8, to clarify, it is rescinding the pending hours worked by a police officer in a specific year but rather is recommending an advisory that full-time or part-time officers should work at least 120 hours. The recommendation of 120 hours is not binding.

Resolution 2011-8 includes other action items, including the following:

- MCOLES seeking authorization from the Legislature to promulgate rules that would allow it to revoke a law enforcement officer of their license when they present a threat to public health, safety or welfare of the public
- Making an advisory recommendation that full-time and part-time officers satisfactorily complete a minimum in-service training program (content to be determined)
- Charging MCOLES staff with tracking the number of hours worked by officers in the state, including considerations for medical and other leaves of absence

MTA appreciates the action by MCOLES as we have been supporting legislation that would have nullified or dramatically reduced the 500-hour work rule as it would have been burdensome on smaller police forces. MTA also thanks Sen. Geoff Hansen (R-Hart Twp.) for his work on this issue. He introduced Senate Bill 31 that would have reduced the 500-hour requirement for law enforcement officers to 120 hours. MTA is pleased the legislation is not necessary. ■



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Townships can enforce “super drunk” law under House package

The House Judiciary Committee approved a bipartisan package of bills in late September that will allow township governments (as well as cities and villages) to enforce the highest penalties under state drunk driving laws. The “Super Drunk Driving Laws,” also known as “High Blood-Alcohol Content (BAC)” laws, approved in 2008 (PAs 461 & 462) included stiffer penalties for offenders. Some of the tougher penalties include requiring offenders to perform up to 360 hours of community service, fines between \$200-\$700 and imprisonment for up to 180 days. The “super drunk” law, however, when it was originally approved did not allow for townships, cities and villages to enforce misdemeanor offenses beyond 93 days of imprisonment, as that is the general restriction on local governments.

The five-bill package (House Bills 4920-24) approved by a 16-0 vote of the House Judiciary Committee on Sept. 22 authorizes local governments to adopt by local ordinance a provision of the Michigan Vehicle Code pertaining to driving with BAC of .17 grams or more. HB 4921, sponsored by Rep. Kurt Heise (R-Plymouth), amends the Charter Township Act while HB 4922, sponsored by Rep. John Walsh (R-Livonia), amends the statute related to general law townships to allow communities to adopt the “super drunk driving” section of the Michigan Vehicle Code by reference. David Bertram of MTA testified alongside Rep. Heise before the committee. Heise, who is the main sponsor of the package, outlined the purpose of the bills. MTA has spearheaded the efforts to get the package introduced and moving in the Legislature. The bills now move to the House floor. ■

House begins to take testimony on construction code items

The House Regulatory Reform Committee has held two hearings since mid-September related to legislation that would make several changes related to the Single State Construction Code. House Bill 4561, sponsored by Rep. Joe Haveman (R-Holland), would allow the State Bureau of Construction Codes flexibility to adopt a new version of the code on either a three-year cycle or a six-year cycle as the department determined was appropriate. Currently, the law mandates that construction codes be updated every three years regardless of need. The bill does not mandate that the codes be updated only once every six years, but allows for flexibility for it to be updated at any time. Further, the bill automatically allows the materials, products, methods of manufacture, or methods or manner of construction provided for in an interim edition of the relevant code not adopted by the state (2012 IRC as an example) to be used throughout the state without any further need for testing or state approval. It also forbids the state or local building departments from mandating their use. The new process under HB 4561 would also require the code changes to come through legislation rather than the rule promulgation process.

If some of these changes seem a bit confusing to you, you’re not alone. Some have testified in committee that the provision that allows for new materials, products or methods to be used in practice, yet not explicitly identified in the code(s), could cause confusion for building inspectors. MTA encourages township officials to share this information with their building inspector(s). The Michigan Home Builders Association is supporting the changes, while a number of manufacturing companies are opposing. ■