

TAX EXEMPT PROPERTY INCLUDED IN EQUALIZED EDUCATION PROPERTY VALUE

STATE DENIES STRAFFORD'S REQUEST TO EXCLUDE IT

The Vermont Department of Taxes, Division of Property Valuation and Review (PVR), issued a decision in June that is problematic for Vermont municipalities. The decision relates to who has the authority to grant tax exemptions and how granting tax exemptions affects the statewide property tax that is established by PVR.

Under Act 60, PVR has the authority to establish the equalized education property value (EEPV) and coefficient of dispersion (COD) for each town. These values are used to establish the common level of appraisal in each municipality. (See article elsewhere in this issue on the common level of appraisal and why it is important to municipalities.) Generally speaking, the common level of appraisal is used to determine the statewide education property tax for each municipality.

The Town of Strafford exercised its legal right to request that PVR re-determine the EEPV and COD that it established for the town. Specifically, Strafford disputed PVR's decision to include in its calculations the fair market value of two properties that town listers had determined to be exempt from property taxes under the public, pious and charitable use exemption of 32 V.S.A. § 3802(4).

Strafford argued that PVR has no authority to question the tax-exempt status of the properties in question. After all, it is the listers' responsibility to determine whether a property is exempt under 32 V.S.A. § 3802(4). In order to make this determination, the listers must apply the criteria established by the Vermont Supreme Court in the so-called "Fly Fishing" case (see this month's Legal Corner for a review of the "Fly Fishing" test).

In its decision, PVR acknowledges that it lacks authority to determine whether property is exempt. As noted in PVR's decision, the Vermont Supreme Court recently held that PVR only has authority to hear appeals related to the fair market value of property, not the tax exempt status of property. *Subud of Woodstock v. Town of Barnard*, 169 Vt. 582 (1999).

Notwithstanding these admissions, PVR took the position that because it has the authority to estimate the fair market value of all property on the grand list when determining the EEPV, it also has the authority to question a municipality's decision to exempt property from taxes. PVR argues that while its decision cannot change the tax-exempt status of the property for the purpose of the landowner owing property taxes, its decision can change the status of the property for the purposes of establishing the fair market value of all properties in a particular town in order to establish a statewide property tax.

VLCT strongly disagrees with PVR's reasoning. In our view, having the authority to determine the aggregate fair market value of property in establishing a statewide property tax does not equate to the authority to question the listers' decision to exempt property from taxes. Vermont statutes and precedent establish separate criteria and a separate process for determining whether a property is exempt from property taxes. The process is that the listers determine whether property is exempt under 32 V.S.A. § 3802(4) and an aggrieved party can appeal the listers' decision to exempt property to Superior Court (not to PVR, as noted in the *Subud* case). PVR is circumventing this process by examining issues of tax exemption through the equalization process.

While VLCT disagrees with PVR's position, municipalities should be aware that PVR may choose to examine their decisions regarding the exempt status of property as part of the equalization process. We have spoken with PVR about our concerns, but they remain confident of their ability to consider tax-exempt property in their calculations. Stay tuned for legislative or court action that may be taken to address this issue.

- Jon Groveman, Director, VLCT Municipal Law Center