

## **Bennington Superior Court Holds HS-122 State Payment Report Subject to Disclosure under Public Records Act. Town Appeals Judge's Decision to Vermont Supreme Court.**

In late 2010, Manchester attorney Joseph O'Dea requested a copy of the HS-122 State Payment Report from the Town of Manchester under Vermont's Public Records Act. Town officials denied Mr. O'Dea's request, asserting that the HS-122 report was exempt from disclosure because a person could accurately extrapolate the household income of virtually every Manchester household eligible for a property tax adjustment from the information in the report. Mr. O'Dea appealed the denial to Bennington Superior Court.

Under Vermont law, resident property owners are required to pay an education property tax on their homestead. Those whose household incomes fall below \$97,000 are eligible for a reduction in their property taxes. The Vermont Department of Taxes calculates this property tax adjustment and transmits this information to each town in an HS-122 report. The property tax adjustment amounts contained in the HS-122 report correspond to the amounts shown on individual property tax bills.

The Town's principal argument was based on 1 V.S.A. § 317(c)(6), which exempts from disclosure "a tax return and related documents, correspondence and certain types of substantiating forms which *include the same type of information as in the tax return itself* filed with or maintained by the Vermont department of taxes or submitted by a person to any public agency in connection with agency business." The Town asserted that the HS-122 report represents the type of document that is so intrinsically related to information taken from a tax return that it must come under the exemption.

Judge John Wesley rejected this argument, noting that legislative history indicated that the Legislature was not ignorant of the possibility that one could extrapolate the income of households eligible for an adjustment when it amended the law in 2006. Relying on the efforts of a House Legislative Study Committee on Income-Based Education Property Tax for Vermonters, the final version of the bill rejected any express protection of tax return information that might be derived from the HS-122 reports. Rather, the bill – Act 185 – adopted the Committee's recommendation that the process be subject to certain other inputs, including non-public factors such as liens, offsets, and applying credits forward, which, when applicable, would somewhat complicate the otherwise simple formulaic relationship between an adjustment and the income of the household eligible to receive it.

Though Judge Wesley noted that the camouflage provided by these other factors "is virtually transparent in the few cases where other factors are present, and non-existent in the vast majority of cases where the adjustment is solely a function of income," nevertheless Act 185 "represents a considered compromise of competing interests, in which explicit confidentiality was rejected." Accordingly, Judge Wesley ordered that the property tax adjustments calculated by the Vermont Department of Taxes in the HS-122 reports are public information and not subject to the exemption in 1 V.S.A. § 317(c)(6).

According to a March 1, 2011 report in the *Manchester Journal*, the Manchester selectboard will appeal Judge Wesley's decision to the Vermont Supreme Court. A copy of the decision is available at [www.vermontjudiciary.org/20112015%20Tcdecisioncvl/2011-2-9-1.pdf](http://www.vermontjudiciary.org/20112015%20Tcdecisioncvl/2011-2-9-1.pdf)

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