

## RETROACTIVE PROVISION OF TAX AMENDMENTS STRUCK DOWN

In *Burton v. Town of Salisbury*, Docket Nos. 99-560, 561 and 569 (Dec. 2001), the Vermont Supreme Court ruled that the provision of a 1995 bill that made amendments to the tax appeal process retroactive to 1991 is unconstitutional. The provision of the bill that is in question addressed the issue of what the listed value of property on the grand list will be if the Board of Civil Authority (BCA) does not substantially comply with its obligation to issue a timely decision on a tax appeal.

Under 32 V.S.A. § 4404(c) as amended in 1995, if the town does not substantially comply with the requirements for issuing a decision in a tax appeal, and the appeal is not withdrawn, then the “grand list of the appellant for the year for which the appeal is being made shall remain at the amount set before the appealed change was made by the listers; except, if there has been a complete reappraisal, the grand list of the appellant *for the year for which the appeal is being made* shall be set as at a value which will produce a tax liability equal to the tax liability for the proceeding year.” The change to this statute in 1995 clarified that when there has been a complete reappraisal, a taxpayer is only entitled to a rollback to the grand list value for the year for which the appeal is being made. Moreover, the bill made this change retroactive to January 1, 1991.

Prior to this amendment, Vermont Courts had ruled that the rollback applied to multiple years other than the year for which the appeal is being made. Specifically, the Vermont Supreme Court had previously ruled that the taxpayer in *Burton* was entitled to a roll back of the value of the property in question for multiple years under the prior version of 32 V.S.A. § 4404(c).

The taxpayer in *Burton* argued that it was unconstitutional for the legislature to invalidate previous rulings of the judicial branch of government by making this legislative amendment retroactive. The Vermont Supreme Court agreed. In its decision, the Vermont Supreme Court stated that:

*In making § 12 of the act retroactive, the legislature implicitly reversed a final judgment from this Court. Such legislation violates the constitutional principle of separation of powers. Id at 3.*

As a result of this decision, municipalities should be aware that the 1995 amendments to 32 V.S.A. § 4404(c) are no longer effective retroactive to January 1991. Going forward, it is clear that rollbacks may only apply for the year for which the appeal is being made. The decision also clarifies that municipalities may not include retroactive provisions in their own zoning bylaws or ordinances that take away a vested right.

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