

## STATE'S EQUALIZATION OF FAIR MARKET VALUE UPHELD

The Vermont Supreme Court has reversed a decision of the Rutland Superior Court in the Town of Killington's appeal of its Act 60 equalized education grand list value. *Town of Killington v. Department of Taxes*, 2003 Vt. 88 (October 24, 2003).

The lower court had found that the State's equalization procedures, used to determine how much in education property taxes each town must raise, were "arbitrary and capricious" and, therefore, unconstitutional. As a result, it ordered the State to re-equalize the Town's education grand list. The Vermont League of Cities and Towns filed a brief of *amicus curiae* ("friend of the court"), asking that the lower court's decision be applied to all other towns in the state.

Killington had appealed the equalized education grand list value set by the state in 1997, the first year Act 60 was instituted. Each year, the Division of Property Valuation and Review (PVR) is required to "equalize" the aggregate fair market value of each municipality's grand list. This is because the relationship between grand list value and actual "fair market value" varies from town to town, depending on real estate market activity, timing and quality of reappraisals, and other factors. The law states that this determination "shall be based upon such methods, as in the judgment of the Commissioner, and in view of the resources available for that purpose, shall be appropriate to support that determination." 32 V.S.A. § 5405 (d). PVR then applies the statewide property tax rate to the municipality's equalized grand list, and this number becomes the value due the state education fund.

The thrust of Killington's appeal was that PVR's equalization procedures were flawed because there were not enough sales of each category of property to yield reliable statistics on which to base an equalization study. While the Rutland Superior Court agreed with the Town that the State's procedures were flawed, in fact, "arbitrary and capricious," the Supreme Court disagreed. Justice Skoglund, writing for the Court, wrote that the lower court was wrong in finding that the State's procedures were "arbitrary and capricious." She continued, "The record reveals that the State adduced ample credible evidence demonstrating that its methods – while limited by the resources available and improvable in certain areas – comported with industry standards and yielded a reasonably reliable estimate of aggregate fair market value." *Town of Killington* at 11.

While this case is important because it shows the Court's willingness to support the overall Act 60 taxation scheme, it is also important because it addresses a recurring theme in the law of property taxation: The taxing authority's decision enjoys a presumption of validity," and unless a challenger can prove that the decision was "wholly irrational" and "unrelated to its intended purpose," the decision will stand. Whether the taxing authority is the state, or the town, acting through its local listers, the courts grant broad deference to that decision-maker: "absent a clear and convincing showing to the contrary, decisions made within the expertise of . . . agencies are presumed correct, valid and reasonable." *Town of Killington v. Department of Taxes*, citing *Vermont Dept. of Taxes v. Tri-State Indus. Laundries, Inc.*, 138 Vt. 292, 294 (1980). Justice Skoglund, in a footnote, stated that the Supreme Court has a "responsibility to affirm the Commissioner's equalization methodology if credible evidence supports a conclusion that it was rational and yielded reasonably reliable results." *Town of Killington* at 6, fn. 2.

The Court also stressed that PVR was only required to do as “reasonable” a job of equalizing property taxes as it had resources available for that purpose. In order to have successfully challenged the State’s method for distributing almost \$700 million in property tax payments, Killington would have had to show that not only was the “State’s approach wholly irrational and unreasonable in relation to its intended purpose,” but also that, given the resources (e.g., funding, staff) provided to PVR by the Legislature, that PVR could be expected to do any better.

The politics of the case notwithstanding, will there be any changes in the education funding process? Towns will continue to receive their equalized education grand list assessment from PVR in January, and the appeals process has not changed. Towns that believe the State’s assessment process is flawed or incorrect may petition the director of PVR for a redetermination within 30 days of receipt of the equalized education property value. 32 V.S.A. § 5408 (a). This petition must be in writing, and must be signed by the chair of the selectboard or its designee. *Id.* The town will then have a hearing before the PVR director, and this decision may also be appealed still further to the Valuation Appeal Board. See *id.*; 32 V.S.A. § 5407.

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