



TAX TRENDS

The newsletter of the Illinois State Bar Association's Section on State & Local Taxation

A note from the co-editors

By Mary Ann Connelly and Stanley R. Kaminski

**SAVE THE DATE—January 29, 2015
Annual Practitioners Meeting
Illinois Department of Revenue
Auditorium, JRTC Concourse Level**

This edition of *Tax Trends* features a very interesting article titled "UNLICENSED PRACTICE OF LAW ISSUES IN ILLINOIS PROPERTY

TAX ASSESSMENT APPEALS" by Thomas McNulty that examines recent case law and proposed legislation pertaining to unlicensed practice issues in Illinois property tax appeals. His article also discusses "recent developments relating to the dangerous consequences of the Unauthorized Practice of Law when unlicensed individuals run afoul of Yamaguchi." ■

Unlicensed practice of law issues in Illinois property tax assessment appeals

By Thomas McNulty

Introduction

In the spring of 2013 the Lake County Board of Review adopted a rule confirming that taxpayers may be represented in property tax assessment appeal proceedings before that tribunal either *pro se* or through attorneys licensed to practice law in Illinois.¹

The initial pronouncement of the intended adoption of the rule reinvigorated in Illinois the national debate concerning unlicensed practice of law ("UPL") issues in the field of real estate tax assessment appeals. The leading case on the topic in Illinois, *In re Yamaguchi*, 118 Ill.2d 417 (1987), held that the completion and filing of a complaint form to invoke the jurisdiction of the board and the appearance before the board as taxpayer's representative² constituted the practice of law. 118 Ill.2d 426. Proponents of the rule argued that based on *Yamaguchi* the rule merely declared existing law. Opponents of the rule advanced the argument that *Yamaguchi* was not applicable and that appeals at boards of review are informal, usually non-adversarial and consist

merely of uncontested informational exchanges between the taxpayer and the assessment tribunal. It was also argued that the proposed rule would simply perpetuate the stranglehold of lawyers upon the marketplace thereby subjecting consumers to their oppressive monopoly which would result in greater fees and/or limit access to the board of review.³ The final adoption of the rule settled the issue at least in Lake County but did not end the larger debate.

This article will examine recent developments both in Illinois case law, which may have misperceived the quasi judicial status of boards of review, and proposed legislation on the issue. This article will also discuss recent developments relating to the dangerous consequences of UPL when unlicensed individuals run afoul of *Yamaguchi*.

The Practice of Law in Illinois

The general rule in Illinois is well settled that in considering conduct which implicates the practice of law, the courts will examine the na-

Continued on page 2

INSIDE

A note from the co-editors. 1

Unlicensed practice of law issues in Illinois property tax assessment appeals 1



IF YOU'RE GETTING THIS NEWSLETTER BY POSTAL MAIL AND WOULD PREFER ELECTRONIC DELIVERY, JUST SEND AN E-MAIL TO ANN BOUCHER AT ABOUCHER@ISBA.ORG

Unlicensed practice of law issues in Illinois property tax assessment appeals

Continued from page 1

ture of the act, rather than the forum or the formality involved. *People v. Goodman*, 366 Ill. 346, 357, 9 N.E.2d 53 (1937); *Chicago Bar Association v. Quinlan & Tyson*, 34 Ill. 2nd 116, 214 N.E.2d 771 (1966). As a consequence there is no general bright line test for every possible scenario; rather, the facts and circumstances underlying each instance must be examined to ascertain the "character of the act". 366 Ill. 357.

It is equally well established that the Illinois Supreme Court has the exclusive power to define and regulate the practice of law such that the role of the legislature is exceedingly limited to declaring unauthorized practice of law to be illegal and prescribing punishment for UPL in aid of the power of the court. *Goodman*, 366 Ill. 346 at 352; *King v. Capital Financial Services*, 215 Ill. 2nd 9 (2005).

In *Yamaguchi*, a real estate broker began to file complaints before the Cook County Board of Appeals (now known as the Cook County Board of Review) although the Board's rule, albeit not strictly enforced, required an attorney signature if not the individual taxpayer's signature on the complaint. 118 Ill.2d 421. The broker contacted Attorney Yamaguchi who signed "numerous blank valuation complaints" and gave them to the broker. 118 Ill. 2d 422. The broker then completed the rest of the complaints, filed the complaints, and attended the hearing on the complaint at the Board for oral argument. 118 Ill.2d 426. Attorney Yamaguchi was charged with 5 counts of improper conduct, one of which was aiding and abetting the unlicensed practice of law. 118 Ill.2d 420. The defense was that the broker's conduct was not the practice of law.

The Court rejected the defense stating: "There can be no doubt that (the broker's) conduct.... was, in fact, the practice of law." 118 Ill.2d 426 (insert for clarity). A few sentences later the Court underscored the point in the following rather clear and unambiguous language:

Both the unsupervised completion of the complaint and the appearance before the administrative tribunal constituted the unauthorized practice of law." 118 Ill.2d 426.

In a case unrelated to UPL, *BLTREJV3 v.*

Kane County Board of Review, 2014 IL App. (2d) 140164 (2nd Dist. 2014), the court was invited to consider a board of review rule promulgated pursuant to Section 16-55 of the Illinois Property Tax Code (35 ILCS 200/16-55) which deemed complaints filed when deposited in the United States mail but not when "mailed" via FedEx or similar third party delivery service. The taxpayer claimed that because boards of review are quasi judicial bodies and because the filing a complaint at the board was the practice of law under *Yamaguchi*, then it necessarily followed that the board was a court. Therefore, Illinois Supreme Court Rules 11 and 12, which allow for delivery of documents by such commercial carriers, should control the determination when a board complaint should be considered filed. The court noted that Rules 11 and 12 apply only to service of documents and not filing complaints. Thus, even if Rules 11 and 12 applied, it was not dispositive of the issue in the case. The power granted the board under Section 16-55 to make "reasonable rules" implied that the board was not compelled to make rules that mimic others. Slip opinion pg. 5.

The court, in dicta, stated that its decision did not rest upon *Yamaguchi* and described *Yamaguchi* as a case in which the attorney was punished for deceiving the tribunal that the complaints had been evaluated by an attorney and that "the board's rules requiring an attorney...to sign a complaint controlled the result" Slip opinion pg. 6. Too, the Court noted that *Yamaguchi* did not hold that boards of review were quasi judicial bodies.

The foregoing language overlooks or misperceives the fact that the perpetration of a fraud on the tribunal was only one of the five counts sustained against Attorney Yamaguchi. Moreover, the board rules requiring attorneys to sign complaints did not render that act the practice of law and thereby control the result. *Yamaguchi* expressly stated the well established rule that it is the nature of the act ("character of the work") that governed the analysis. 118 Ill.2d 427.

Thus it is incorrect to say the execution of a complaint form is the practice of law because the board in that case had a rule requiring attorneys (or individual taxpayers) to sign them. It was stipulated in *Yamaguchi* that the

TAX TRENDS

Published at least four times per year.

Annual subscription rate for ISBA members: \$25.

To subscribe, visit www.isba.org or call 217-525-1760

OFFICE

Illinois Bar Center
424 S. Second Street
Springfield, IL 62701
Phones: 217-525-1760 OR 800-252-8908
www.isba.org

CO-EDITORS

Mary Ann Connelly
180 N. LaSalle St., Ste. 2901
Chicago, IL 60601

Stanley R. Kaminski
190 S. LaSalle St., Ste. 3700
Chicago, IL 60603

ASSOCIATE EDITORS

Nicholas P. Jordan

MANAGING EDITOR/

PRODUCTION

Katie Underwood
kunderwood@isba.org

STATE & LOCAL TAXATION

SECTION COUNCIL

Stanley R. Kaminski, Chair
Gary H. Smith, Vice Chair
Nora A. Doherty, Secretary
David Kupiec, Ex-Officio

Thomas M. Battista	John G. Locallo
Adam P. Beckerink	Thomas J. McNulty
Aaron R. Bilton	Julie-April Montgomery
Whitney T. Carlisle	Timothy E. Moran
Mary Ann Connelly	Mary T. Nicolau
Mark R. Davis	John K. Norris
David P. Dornier	Donald T. Rubin
Joanne Elliott	William J. Seitz
Brian E. Fliflet	Rodney C. Slutzky
Mauro Glorioso	Hon. Alexander P. White
Thomas A. Jaconetty	Richard D. Worske
Brian P. Liston	

Tara H. Ori, CLE Coordinator
Paul A. Osborn, CLE Committee Liaison
David B. Sosin, Board Liaison
Mary M. Grant, Staff Liaison

Disclaimer: This newsletter is for subscribers' personal use only; redistribution is prohibited. Copyright Illinois State Bar Association. Statements or expressions of opinion appearing herein are those of the authors and not necessarily those of the Association or Editors, and likewise the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

Articles are prepared as an educational service to members of ISBA. They should not be relied upon as a substitute for individual legal research.

The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

Postmaster: Please send address changes to the Illinois State Bar Association, 424 S. 2nd St., Springfield, IL 62701-1779.

board did not strictly enforce the rule. 118 Ill.2d 421. The *Yamaguchi* court expressly rejected this fact to constitute an excuse. 118 Ill.2d 427. (“No justification” in the assertion the board acquiesced in the conduct).

Finally, it is true that *Yamaguchi* did not say that boards of review are quasi-judicial because it was not necessary to the analysis. It was already established that Illinois boards are quasi-judicial. *Jarman v. Board of Review* 345 Ill 248, 253 178 N.E. 91 (1931) (the rule is established that if the officers acting are invested by the legislative with power to decide on the property rights of others they act judicially in making their decision, whatever may be their public character; actions taken by board of review in reviewing an assessment “obviously” judicial in nature); *Goodfriend v Board of Appeals* 18 Ill.App.3d 412, 418 305 N.E.2d 404 (1973) (Cook County Board of Appeals is vested with the power to decide the property rights of others, a power which when exercised makes their official actions judicial). These cases are conclusive that it is the function performed by the tribunal or officer that determines whether it is quasi-judicial. The ability to determine property rights makes boards of review quasi-judicial, “whatever may be their public character,” that is to say, whether they are judges or lawyers or not.⁴

So viewed, *BLTREJV3* is best understood as standing for the limited proposition that Supreme Court Rules 11 and 12 do not relate to the filing of complaints and therefore do not supersede the reasonable rule making authority of a board of review under Section 16-55 of the Property Tax Code.

The Consequences of UPL

Any judgment, such as an assessment determination, procured through UPL is void and could be set aside under the nullity rule. *Downtown Disposal Service v City of Chicago* 979 N.E.2d 50; 2012 IL 112040 (2012) and *Spreck v Property Tax Appeal Board* Docket 5-99-0676 (5th Dist 1999) (assessment appeal filed by taxpayer’s son voided on UPL grounds).

In a recent appellate decision, a divided court vacated a 1999 judgment obtained by the City of Chicago in part because the corporate defendant was represented by a corporate officer and not an attorney. *Stone St. Partners v. Chicago Dept. of Administrative Hearings* 2014 Ill. App. 1st 23654 (1st Dist 2014) petition for leave to appeal granted Docket #117720 (Ill. Sup. Ct. 9/24/14). In

Stone St Partners, the City failed to properly serve a notice of violation upon the corporate respondent. Nevertheless a corporate officer attended the hearing and defended against the charges. The corporation did not become aware that the hearing officer had entered a judgment until 11 years later and then sued to vacate the judgment. A divided court held that the claim that the judgment was void for lack of proper service was not waived by the corporate officer’s attendance at the hearing since corporations must be represented by an attorney. Slip opinion pg. 8. As a consequence, an assessment judgment procured through UPL would be void and could be vacated at any time.

Forming the Right Relationship

In a recent advisory opinion, the ISBA reminded lawyers that they must have the proper attorney client relationship. ISBA Professional Conduct Advisory Opinions 14-03 (May 2014). The ISBA concluded that staff attorneys retained by a non-lawyer business entity are prohibited from providing legal services to the entity’s customers. Staff attorneys employed by a tax consulting firm therefore may not file complaints on behalf of the consulting firm’s taxpayer customers. Too, the *Goodman* case extends that prohibition to private attorneys who are independently retained by the consulting firm which has contracted with the taxpayer and received the authority to retain counsel on the taxpayer’s behalf. *Goodman* cautions that the true attorney-client relationship is not present, *Goodman* 366 Ill. 356. See also *In re Gaffen*, Supreme Court No. M.R. 18285 (Ill. Sup. Ct. 2002) (attorney disciplined for sharing fees with tax consulting firm).

Recent Legislation

During the recent legislative session Senate Bill 3499 was introduced. 98th Illinois General Assembly Senate Bill 3499. (“SB 3499”) SB 3499 proposed to authorize the following individuals to represent taxpayers at all boards of review, excluding Cook County; a certified public accountant, a licensed real estate agent, an individual who has a certified assessment evaluation certification from the International Association of Assessing Officers, a certified member of the Appraisal Institute, and any others designated by the local county.

One of the issues raised by such bills is who is to be deemed sufficiently qualified to practice law without a license at a board

of review. If the work is fairly simplistic as maintained by some, why wouldn’t a college degree alone qualify someone as a representative? A serious flaw in bills like SB 3499 is that it falsely equates an individual’s knowledge or expertise in determining valuation with the skill and training necessary to file and prosecute an appeal within the statutory framework set forth in the Property Tax Code. Under this logic, physicians should be authorized to prosecute medical malpractice claims.

The proposed legislation ignores also that the legislature may not grant a law license nor can it define or regulate the practice of law. That power is reserved in Illinois exclusively to the Supreme Court. *Goodman*, 366 Ill 352. The resolution of the policy issue therefore is properly the function of the court. See Illinois Supreme Court Rule 711 (supervised senior law students allowed to perform certain services) and Rule 712 (licensing of lawyers from foreign countries).

Yamaguchi is still the law until the Supreme Court says it is not. The applicable rule was stated in *Agricultural Transportation v. Carpentier*, 2 Ill.2d 19, 27 (1953):

Where the Supreme Court has declared the law on any point it alone can overrule and modify its previous action.

Thus, while opponents of the rule expressed in *Yamaguchi* may attempt to distinguish or limit the case or suggest *Yamaguchi* does not mean what it says at 118 Ill.2d 426, or attempt to adopt legislation like SB 3499, such efforts are to no avail until the Supreme Court expressly reverses itself.

Conclusion

Yamaguchi means what it says: the completion and filing of a complaint form at a board of review and the submission of evidence and argument before a board of review is the practice of law. 118 Ill. 2d 426. Judgments resulting from UPL are void. Everyone involved in the appeal process must be aware of these issues so that their conduct conforms to the law while the UPL debate continues and the boundaries of permissible conduct are tested.

1. Lake County Illinois Board of Review Rule II.

2. Taxpayer representation for the purpose of this article is considered to include the act of preparing and filing the complaint before an Illinois board of review to invoke its jurisdiction to act. It also includes presenting the evidence and/or

TAX TRENDS

ILLINOIS BAR CENTER
SPRINGFIELD, ILLINOIS 62701-1779

JANUARY 2015

VOL. 58 NO. 7

Non-Profit Org.
U.S. POSTAGE
PAID
Springfield, Ill.
Permit No. 820



Unlicensed practice of law issues in Illinois property tax assessment appeals

Continued from page 3

argument on taxpayer's behalf, the examination and cross-examination of witnesses, and the submission of argument to the Board. Per the *Goodman* case, *infra*, providing counsel to taxpayers that they have a cause of action and how to pursue that cause of action would also qualify as an act constituting the practice of law. The analysis of this article, however, is limited to the preparation, filing and prosecution of a complaint at the Board of Review as taxpayers representative. Testifying as an expert witness is not within the meaning of taxpayer's representation in this discussion. Licensed real estate appraisers and real estate brokers and others with valuation expertise may provide expert testimony to assist the Board in determining the facts and issues before it.

3. Letter to the Board of Review, February 26, 2013 submitted on behalf of Marvin F. Poer Company.

4. The Cook County Assessor has the same powers and duties as boards of review to "upon complaint" render an assessment that "appears to be just" after affording a taxpayer an opportunity to be heard. Compare Section 9-185 of the Property Tax Code 35 ILCS 200/9-185 with Section 16-95, 35 ILCS 200/16-95. See also *People ex rel. Devine v Murphy* 18 Ill.2d 522, 532, 693 N.E.2d 349 (1998) (courts may review assessments because assessments constitute a determination of property rights). For this reason the ISBA has opined that *Yamaguchi* extends to taxpayer representation at the Assessor's office. ISBA Policy on Real Estate Taxation Practices (April 3, 1992).

FREE to ISBA members

Your research isn't complete until you've searched ISBA section newsletters

Fourteen years' worth of articles, fully indexed and full-text searchable...and counting.



The ISBA's online newsletter index organizes all issues published since 1999 by subject, title and author.

More than a decade's worth of lawyer-written articles analyzing important Illinois caselaw and statutory developments as they happen.

WWW.ISBA.ORG/PUBLICATIONS/SECTIONNEWSLETTERS