July 2008

State Tax Return

Volume 15 Number 3

Georgia Clarifies Central Valuation for Utilities and Limits County Tax Powers

E. Kendrick Smith
Atlanta
(404) 581-8343

Shane A. Lord
Atlanta
(404) 581-8055

The Supreme Court of Georgia finally clarified that county boards of tax assessors ("BTAs") cannot alter the State's proposed "centralized" value of a public utility's property. In *Monroe County v. Georgia Power Company*,[1] the Court ruled that the Monroe County BTA could not increase the assessed value on the Georgia Power Company property apportioned to the County. In general, *ad valorem* tax is computed by multiplying the assessed value of a taxpayer's property by the assessment ratio (both typically set by the county BTA), and then multiplying this result by the *ad valorem* tax rate (set by the governing authorities of the various taxing jurisdictions within the county). Any increase in the tax assessment can only result from an increase in the property's assessed value, a change in the assessment ratio, or an increase in the tax rate.

Georgia *Ad Valorem* Taxation Of Public Utilities

Most property owners in Georgia file their returns and receive their assessed property valuations from the BTA of the county in which the property is located. "Public utilities," however, are treated differently. They must file their annual property tax returns with the Commissioner of the Georgia Department of Revenue ("Commissioner"), who then places a "centralized" aggregate valuation on all of the utility's Georgia property, apportions the values among the various Georgia counties in which the utility has property and, after reviewing the values with the State Board of Equalization ("SBE"), sends out "proposed assessments" to the utility and the county BTAs. The county BTAs may either adopt or modify the proposed assessment before issuing a "final assessment" to the utility.[2] Any appeal of the proposed assessment must be filed in the Superior Court of Fulton County, Georgia and must name the Commissioner as defendant.[3]

Although it has always been clear that a county BTA may modify its assessment ratio with respect to taxing utilities, it has been unclear whether the BTA also has

[1] *Monroe County v. Georgia Power Company*, 655 S.E.2d 817 (Ga. 2008).

[2] O.C.G.A. § 48-2-18(d); s*ee also Telecom*USA, Inc. v. Collins*, 393 S.E.2d 235 (Ga. 1990).

[3] *Id*. § 48-2-18(c); s*ee also Telecom*USA, Inc. v. Collins*, 393 S.E.2d 235 (Ga. 1990).

authority to alter the Commissioner's proposed valuation.[4] Similarly, uncertainty has existed as to whether a utility can appeal a final assessed value to the county board of equalization.[5]

The Georgia constitution limits the assessment ratio that can be applied to public utilities. The assessment ratio is defined as "the fractional relationship between the assessed value and the fair market value of the property" (i.e., the percentage of fair market value to which the county has determined shall apply to the tax rate).[6] The assessment ratio applied to public utilities cannot exceed the ratio applied to locally appraised property.[7] Accordingly, the politically expedient path for counties to obtain more tax revenue is to alter the assessed value of a utility's property, rather than go through the political barriers of increasing the assessment ratio applied to locally appraised properties.

As demonstrated in *Monroe County v. Georgia Power Company*, tax revenues can easily be tripled. Moreover, such increases escape the public scrutiny connected with raising assessment ratios or tax rates on locally appraised properties. This unchecked ability to tap non-voting "deep pockets" for tax revenue, however, can lead to abuse.

The Georgia Supreme Court in *Telecom*USA, Inc. v. Collins*[8] and the Georgia Court of Appeals in *Georgia Power Company v. Monroe County*[9] each invited the General Assembly to address the ambiguities inherent in the Georgia Code's *ad valorem* tax provisions as they related to public utilities. The Legislature, however, failed to do so—perhaps because it desired to avoid making enemies of the county officials dependent on property tax revenues or large public utilities targeted by the counties for more property taxes. Unwilling to get involved, the Legislature abdicated its duties to the courts.

Monroe County v. Georgia Power Company

Georgia Power Company ("Georgia Power") filed a 2003 return with the Commissioner and SBE showing approximately $8.8 billion as the fair market value of all of Georgia Power's real property holdings in the state of Georgia. The Commissioner reviewed and approved the value provided on the return and apportioned the value among the counties in which Georgia Power held real property. The apportioned value of Georgia Power's real property in Monroe County was calculated to be approximately

---

[4] O.C.G.A. § 48-2-18(d).

[5] S*ee Telecom*USA, Inc. v. Collins*, 393 S.E.2d 235, 239 n.3 (Ga. 1990).

[6] *Id.* § 48-5-341(3).

[7] GA. CONST. OF 1983, art. VII, Sec. I, Par. III(f).

[8] *Telecom*USA, Inc. v. Collins*, 393 S.E.2d 235, 240 (Ga. 1990).

[9] *Georgia Power Company v. Monroe County*, 644 S.E.2d 882, 886 (Ga. Ct. App. 2007).

$229 million. This apportioned value was multiplied by a 36.27% assessment ratio resulting in an assessment value of approximately $83 million. Based on this assessment value, the Commissioner computed a proposed tax assessment on the Monroe County property of approximately $2 million.

After being notified of the Commissioner's proposed assessment, the Monroe County BTA rejected both the Commissioner's determination of fair market value for the property and the assessment ratio. It determined that Georgia Power's property had a fair market value of $701 million, and it increased the assessment ratio to 40%. These adjustments resulted in a final tax assessment of approximately $5.98 million, roughly three times the proposed assessment.

Georgia Power appealed the final assessment to the Monroe County Superior Court. Not surprisingly, the local trial court rejected Georgia Power's arguments and entered a summary judgment in favor of the County. The Georgia Court of Appeals reversed and remanded the case to the trial court.[10] The Supreme Court of Georgia granted certiorari to address the specific issue of whether "Monroe County lacked authority to modify the proposed assessment calculations of the State Board of Equalization regarding the fair market value of Georgia Power's real property."[11]

The Court held that the unit tax method for taxation of public utilities requires the Commissioner's centralized determination of fair market value to be respected by the counties.

> This system of apportionment by the Commissioner is in accord with the use of a unit tax method in Georgia for taxing property of public utilities. Under this method, the overall value of a public utility's property held within the state is determined as a whole and then divided among the counties in which the property is located in proportion to the percentage of the overall property located in that county.[12]

Although the Legislature altered the *ad valorem* tax structure for public utilities in 1988, it retained the unit tax method.[13] The unit tax method is also consistent with the grant of power to the Commissioner to promulgate apportionment rules that in the "[C]ommissioner's judgment are reasonably calculated to apportion fairly and equitably the property between the various tax jurisdictions."[14] The Court concluded that granting county BTAs the authority to change the Commissioner's assessed value would be

---

[10] *Georgia Power Co. v. Monroe County*, 644 S.E.2d 882 (Ga. Ct. App. 2007).

[11] *Monroe County v. Georgia Power Co.*, No. S07G1156, 2007 Ga. LEXIS 567 at *1 (Ga. July 16, 2007).

[12] *Monroe County v. Georgia Power Co.*, 655 S.E.2d 817, 819 (Ga. 2008).

[13] *Telecom*USA, Inc. v. Collins*, 393 S.E.2d 235, 238 (Ga. 1990); *see also* Ga. L. 1988, p. 1568.

[14] O.C.G.A. § 48-5-511(c)(2)(F).

contrary to the purpose of having the State devote expenses and time to reviewing and approving of the property values.

The Court held that the grant of authority to the counties to make final assessments must be interpreted to preserve both the unit tax method and the counties' new role (since the 1988 amendment) of making an assessment that might be different from the Commissioner's and handling the appeals from those modified final assessments. The Court concluded that these objectives can only be achieved by allowing the Commissioner to control the determination of the property's value and allowing each county to determine the appropriate assessment ratio.

Conclusion

The *Monroe County v. Georgia Power Company* decision provided a middle ground that preserves the counties' authority to make final assessments of *ad valorem* tax upon public utilities, while also preserving a greater level of independence and due process in the valuation of public utility properties. The Commissioner's "centralized" valuation is final; the State Legislature was able to avoid involvement; and the counties still retain some authority in determining final assessments—but this power is now clearly limited.

This article is reprinted from the *State Tax Return,* a Jones Day monthly newsletter reporting on recent developments in state and local tax. Requests for a subscription to the *State Tax Return* or permission to reproduce this publication, in whole or in part, or comments and suggestions should be sent to Teresa M. Barrett-Tipton (214.969.5186) in Jones Day's Dallas Office, 2727 N. Harwood, Dallas, Texas 75201 or StateTaxReturn@jonesday.com.

©Jones Day 2008. All Rights Reserved. No portion of the article may be reproduced or used without express permission. Because of its generality, the information contained herein should not be construed as legal advice on any specific facts and circumstances. The contents are intended for general information purposes only.