

PUBLICATION

Spotlight On Georgia: Important Property Tax Development For Public Utilities

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The Georgia Supreme Court recently accepted for review a case with significant ramifications for all companies that file property tax returns with that State's Revenue Commissioner. Those companies that would have interest in this development include, among others: gas, electric, railroad and telephone companies. These types of companies are generally known as "centrally assessed taxpayers."

Georgia Power Company, an electric utility, timely filed with the Revenue Commissioner a 2003 ad valorem tax return that included its estimate of its statewide operating property's fair market value. The Georgia Revenue Commissioner, pursuant to OCGA Section 48-2-18, issued his proposed assessment which he calculated by applying what he determined to be the appropriate assessment ratio to his estimate of fair market value. The Monroe County Board of Tax Assessors rejected both the Commissioner's estimate of fair market value and his assessment ratio, raising both components, claiming to have the power to make both these changes under OCGA Sections 48-2-18 and 48-5-511(b). These statutes, on which the County Board relied to reappraise the fair market value, provide that the words "assessment ratio" reflect the fractional relationship that the assessed value of property bore to the fair market value of the property. This suggests, according to the County, that the act of assessment includes both the determination of a ratio and an estimate of fair market value.

Georgia Power filed for equitable relief which was denied by the Monroe County Superior Court. The Court of Appeals reversed, holding that the County Board's final assessment under OCGA Section 48-2-18 could not include a reappraisal of the fair market value of any taxpayer required to make a return to the state. The issue before the Georgia Supreme Court is whether the Monroe Board exceeded its authority when in the course of making its final assessment of Georgia Power Company's property; it substituted not only its own assessment ratio but also its own fair market value for those calculated by the Revenue Commissioner.

Prior to Monroe County's action, this statute was generally understood to mean that a county could change the assessment ratio, but not the Commissioner's estimate of value. Georgia is a unit rule state, which means that the value of the property is determined by valuing the business as a whole, apportioning a part of the value to Georgia and then distributing that value to each of the counties where the taxpayer has property. Georgia Power is a part owner of a large generating facility in Monroe County and the County sought to separately value that generating facility. The significance of this case is that if any of Georgia's 159 counties could change the Revenue Commissioner's estimate of fair market value, the probability of double taxation exists. Additionally, a centrally assessed taxpayer would then be required to challenge multiple, different valuations of the same property in the Superior Court of each county.

Georgia Power's case will be argued before the Georgia Supreme Court in mid-October and a decision is expected to be issued by the end of the first quarter in 2008.