



State of Illinois
PROPERTY TAX APPEAL BOARD

KEVIN L. FREEMAN
Chairman

MICHAEL I. O'MALLEY
Executive Director & General Counsel

Standing Order No. 3

THE MEANING OF “SHALL” IN SECTION 16-185
OF THE PROPERTY TAX CODE

Section 16-185 of the Property Tax Code (the “Rollover Statute”) provides that when the Property Tax Appeal Board (PTAB) renders a decision to lower the assessment of an owner-occupied residential property, the reduced assessment, subject to equalization, **shall remain in effect for the remainder of the general assessment period as provided in Sections 9-215 through 9-225** unless the property is sold or the decision of PTAB is reversed or modified by a court. 35 ILCS 200/16-185 (LexisNexis, Lexis Advance through Public Act 103-7 of the 2023 Regular Session of the 103rd General Assembly).

The meaning of “shall” in the Rollover Statute has been the subject of much debate and litigation before this Board. For clarity and notice to both current and potential appellants, the PTAB issues this Standing Order.

IT IS HEREBY ORDERED:

1. For the reasons stated below, the PTAB finds the word “shall” in the Rollover Statute is mandatory and binding on this Board, and a literal interpretation was the intent of the Illinois General Assembly. Therefore, the PTAB will enforce the literal interpretation and constitute the word “shall” as a mandate imposed on this Board by the General Assembly.
2. This Standing Order is effective immediately and applies to all current and future appeals filed with the PTAB.
3. The Executive Director will immediately publish this Standing Order.
4. Nothing in this Order changes the Board’s existing rules. This Standing Order only directs the Executive Director and staff to interpret and apply the Rollover Statute consistently in accordance with the Board’s interpretation.

BOARD MEMBERS

Jim Bilotta
Frankfort

Robert J. Steffen
South Barrington

Dana D. Kinion
Springfield

Sarah Buckley
Chicago

5. Standing Order No. 3 will remain in effect until repealed by a vote of this Board, an amendment enacted to the Rollover Statute by the General Assembly, or upon a binding decision of the judicial branch.

Discussion

I. Introduction

At issue is the language of paragraph 5 of section 16-185 of the Property Tax Code (Rollover Statute), which states:

If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel on which a residence occupied by the owner is situated, such reduced assessment, subject to equalization, **shall remain in effect for the remainder of the general assessment period as provided in Sections 9-215 through 9-225**, unless that parcel is subsequently sold in an arm's length transaction establishing a fair cash value for the parcel that is different from the fair cash value on which the Board's assessment is based, or unless the decision of the Property Tax Appeal Board is reversed or modified upon review.

The PTAB finds the word "shall" in the Rollover Statute is **mandatory and binding** on this Board, and a literal interpretation was the intent of the Illinois General Assembly.

As a result, once the PTAB issues a decision reducing the assessment of an owner-occupied residential property, the PTAB lacks the authority to issue a decision in the remaining years of the general assessment period granting a further assessment reduction, regardless of the basis of the appeal. Therefore, if the PTAB renders a decision reducing a taxpayer's assessment in the first year of the assessment period and, in a subsequent year of the assessment period, the board of review grants a reduction below PTAB's first-year decision, should the taxpayer file an appeal challenging the board of review's assessment for the subsequent year, this Board will issue a decision – per the Rollover Statute – increasing the assessment to the year one level.

If, for the sake of further illustration, the PTAB issued a decision lowering the assessed value of an owner-occupied residential property for the first year of a triennial assessment period to \$100,000, then in that case, the Rollover Statute requires the PTAB to issue decisions in the second or third year of the triennial period maintaining the \$100,000 assessment. Therefore, if in year two of the general assessment period, the board of review reduces the assessed value to \$90,000 and the taxpayer appeals to the PTAB seeking a reduction below \$90,000, the PTAB will issue a decision increasing the assessed value to \$100,000.

Just as this Board lacks the authority to issue a decision granting a further reduction, it also lacks the authority to issue a decision increasing the assessment for the remaining years of a general assessment period after the PTAB rendered a decision reducing an owner-occupied property's assessment, except as subject to equalization.

There are, of course, exceptions. The exceptions are limited to those articulated explicitly in the Property Tax Code and include:

1. A sale of the parcel sold in an arm's length sale. 35 ILCS 200/16-185.
2. Destruction of the subject property. 35 ILCS 200/9-180
3. Improvements to the subject property. 35 ILCS 200/9-160

II. Statutory Construction

“The primary rule of statutory construction is to ascertain and give effect to the Legislature’s intention. The best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning. The statute should be evaluated as a whole, with each provision construed in connection with every other section. When the statutory language is clear, no resort is necessary to other tools of construction.” (Internal citations omitted) *Cinkus v. Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 216-17, 886 N.E.2d 1011, 1021-22 (2008). When reading the Rollover Statute in isolation, there is no ambiguity. However, when reading the Rollover Statute as part of the Property Tax Code and in conjunction with the Illinois Constitution, a taxpayer could, and indeed some have, argued that a literal interpretation of the Rollover Statute violates the intent of the Legislature and the Uniformity Clause of the Illinois Constitution. See 35 ILCS 200/1, *et seq.*, and Ill.Const.1970, art IX, §4(a). Administrative review challenges to PTAB’s literal interpretation of the Rollover Statute have resulted in a split in the circuit courts.

a. Split amongst the Circuit Courts

Neither the Supreme Court nor the Appellate Court have issued a ruling interpreting the Rollover Statute, but circuit courts in Lake and Cook County have. The decisions of the circuit courts have resulted in conflicting conclusions.

Cook County

In PTAB docket 08-23690, the taxpayer filed an appeal with PTAB seeking a reduction in its assessment to \$303,452. The PTAB had issued a decision valuing the property’s assessment at \$331,631– the same assessment as determined by this Board in the appellant’s 2007 appeal, which PTAB determined had to be carried forward under the Rollover Statute. (PTAB Docket No. 07-23291). The appellant sought administrative review. In its decision, the Circuit Court of Cook County ruled that the Rollover Statute is not ambiguous. *Considine v Illinois Property Tax Appeal Board, et al.*, 2013 COPT 03 (Cook Cnty. Cir. 2015). The court affirmed PTAB’s decision. *Id.*

Lake County

In Lake County, the Rollover Statute was the subject of two separate administrative review cases. In the first, the judge reversed PTAB's decision. *Mohamed Abtahi v. State of Illinois Property Tax Appeal Board, et al.*, 18 MR1116 (19th Cir. 2019). The PTAB issued a decision denying the appellant's request for a reduction below a PTAB-determined valuation from a prior year, consistent with our decision in *Considine*. *Id.* The Lake County Court reasoned that the legislative intent behind the Rollover Statute was to only bar a board of review from increasing the assessment, thus allowing homeowners to seek further reductions at the PTAB. *Id.* The judge found that other sections of the Property Tax Code did not support a literal reading of 16-185. *Id.*

However, another Lake County judge affirmed PTAB's strict application of the Rollover Statute in a separate consolidated administrative review of twenty-two cases. *Brusch v. PTAB, et al.* 13 MR 1236 (19th Cir. 2014). In the PTAB's decision that the circuit court affirmed, this Board stated, "Pursuant to the foregoing provision of section 16-185 of the Property Tax Code, the Property Tax Appeal Board finds that the prior year's decision **"shall"** be carried forward to the subsequent year subject only to equalization." The obvious result is a split within the Nineteenth Judicial Circuit.

b. Legislative Intent

An analysis of the legislative intent of Section 16-185, the Rollover Statute, reveals that the General Assembly was aware that the plain reading of the statute's language would result in prohibiting a taxpayer from seeking a further reduction in the same general assessment period once the PTAB has ordered a reduction in one of the preceding years.

When Senate Bill 142 (P.A. 83-0676) added the relevant language to the Rollover Statute, the bill's sponsor stated:

"Senator Sangmeister: [I]t was brought to our attention, and I think those of you that are lawyers here have probably handled a number of cases where after having taken a case to the Property Tax Appeal Board, we find out the next year around that the township assessor just says, well, I don't care what the Tax Appeal Board says, we're going to put it right back up where it is again. And the next year the Tax Appeal Board knocks it down again and they put it back up. Meanwhile, we have a lot of people spending a lot of money with lawyers going through the ... the appeal process, and it is rather disgusting to a taxpayer after they have fought their battle through the Tax Appeal Board, without any change at all in the status of the property, to have it pushed right back up again the next year. And this bill simply says you can't do that, unless, of course, there has actually been a change in the value of the property."

Public Act 88-0660 amended Sec. 16-185 to remove the language of the prior version, "which allowed a taxpayer or other interested party to show "substantial cause" why such reduced assessment should not remain in effect and replaced it with language regarding a subsequent arm's length sale establishing a new value. During the debate on this change to the Rollover Statute the sponsor described the bill as follows:

"Senator Dunn: [...] [I]f you, as an individual, appeal your property taxes, and the matter goes to the Property Tax Appeal Board and you win, the assessor is precluded the following year from raising up your taxes and the assessment, unless there is a sale or until the next quadrennial."

The Board notes that the "substantial cause" language was not changed in the board of review sections of the Code. 35 ILCS 200/16-80 and 16-147. Thus, a taxpayer can still show "substantial cause" under Sec. 16-80 or 16-147 to reduce their assessment, and the fact that the legislature chose not to change that section for PTAB demonstrates that they were deliberate in not allowing further reductions from PTAB.

In PTAB docket 09-03056, counsel for the appellant argued that Sec. 16-185 was unconstitutional and prevented the appellants from obtaining a further reduction of their assessment based on market decline. In support of this argument, counsel tendered the transcript of the legislative debate of House Bill 25.¹ It is apparent from the debate transcript that the bill's sponsor was not present, and another representative attempted to speak to the bill. That debate is as follows:

"Representative McGuire: All we're talking about is if you get an assessment reduction you get to keep the reduction for the entire tax cycle. [...].

Representative Biggins: Now, Representative, when you had this bill in Revenue there was one little problem with it and I think it can be ironed out in the Senate. But at that time, unless it's been amended, if an assessor or a board reduced a value during an assessment cycle or a quadrennial period, the bill originally written said it couldn't be changed at all, upward or downward. Now the problem with that is, let's suppose the state reduces a value and the next year let's say an incinerator is built next to a site causing a drop in value. The assessor would be precluded from lowering the value again. Is that still ... if that's still in there we can pass it out of the House and they can amend it in the Senate or correct it there, but the taxpayer should be allowed to appeal downward again. I know the intent is not to have an upward increase.

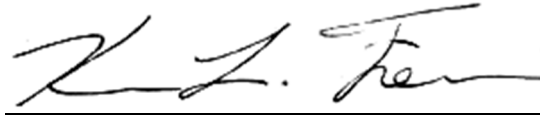
¹ House Bill 25 added language to the "Direct Appeal" section of 35 ILCS 200/16-185, which allows a party to appeal directly to the PTAB without first seeking relief at the county board of review or board of appeals if certain conditions are met.

Representative McGuire: Yeah, Representative Biggins, my best information is that situation would not really occur till the next cycle. So it's not a situation that would occur. We'll talk about it and we can change it in the Senate if needed, but we don't believe that the situation would occur."

However, the General Assembly subsequently passed P.A. 89-0671, which ultimately amended a different part of Sec. 16-185 and not the portion at issue here, reflecting a deliberate choice not to address the concern mentioned by Representative Biggins during the debate on House Bill 25. The debate of HB 25 suggests that the General Assembly was aware that the language of Sec. 16-185 did not allow a homeowner whose assessment was reduced by PTAB to reduce their assessment further during the same general assessment period. Even so, they chose not to amend the relevant unambiguous statutory language.

III. Constitutional Issues

While this Board has considered constitutional questions from a literal reading of the statute—specifically, does a literal reading of the Rollover Statute violate the Uniformity Clause of the Illinois Constitution (Ill.Const.1970, art IX, §4(a))— administrative agencies lack the authority to invalidate a statute on constitutional grounds or even to question its validity. *Cinkus v. Stickney Municipal Officers Electoral Bd.*, 228 Ill. 2d 200, 214 (2008); *Cook County Board of Review v. PTAB*, 339 Ill. App. 3d 529 (2003). Furthermore, “[s]tatutes and regulations are presumed constitutional...” *People ex rel. Harris v. Parrish Oil Production, Inc.*, 249 Ill. App. 3d 664, 668, 622 N.E.2d 810, 190 Ill. Dec. 780 (1993).” *People v. Olsen*, 388 Ill. App. 3d 704, 717 (2009).



Chairman



Member



Member



Member



Member



Clerk

Entered this 2nd day of October, 2023.