

Taxation

Background

Where billboards are subject to real or personal property taxes, assessors often cross the line and attempt to apply condemnation valuation methodologies rather than the distinct valuation methods that apply to taxation of property. The result is that a property tax can, when misapplied, in fact become an unlawful levy.

Position

The law in virtually every state is quite clear that property tax assessments are confined to the intrinsic value of the parcel or structure at issue. Assessments that are based on factors reflecting the broader commercial enterprise in which the property is employed are not permitted under property tax law.

In contrast, condemnation is the expropriation of all economic use of a billboard structure. Thus condemnation valuation must assure that the owner is paid for all incidents of ownership that comprise enterprise value, including such diverse items as goodwill, the structure itself, lost income, and the value of the underlying leasehold.

Message Points

- States, counties and cities all follow differing patterns of taxation for individuals, businesses, and property. For example, some states levy personal income tax; others rely on property taxes, while still other states rely on corporate taxes to offset income or property taxes.
- Billboard companies, like all other businesses, pay their full share of all taxes for which they are obligated under law to local, state, and federal governments.
- Recent studies by taxing authorities in California and Florida underscore that the only viable method for valuing billboards for property tax purposes is through the cost approach which determines the actual construction cost of a billboard structure.
- Both the California and Florida cases have made it clear that the application of alternate condemnation based valuation such as Gross Income Multipliers (GIM) and comparable sales appraisals result in an unlawful assessment that improperly includes income.

Resources

California Guidelines for the Assessment of Billboard Properties, Board of Equalization, November 13, 2002

Property Appraisers Use Cost Approach to Value Billboards; Guidelines Need Updating, OPPAGA Special Review (Office of Program Policy Analysis and Government Accountability), the Florida Legislature, December 2002

State of New Jersey Department of the Treasury, Division of Taxation, guidance to: *Holders of the Real Property Appraisal Manual for New Jersey Assessors*, Thomas J. Reilly, chief, Field Assistance Section, February 2005

Tax Relief, OAAA Counsel Eric Rubin, December 2002

Trends in the Property Tax Valuation of Commercial Outdoor Advertising Structures, Journal of Property Tax Assessment and Administration, Volume 1, Issue 25, Cris K. O'Neill and Bradley R. Marsh, 2004

When a Property Tax Becomes a Taking, OAAA Counsel Eric Rubin, June 2002

California Guidelines for the Assessment of Billboard Properties

TO COUNTY ASSESSORS AND INTERESTED PARTIES: GUIDELINES FOR THE ASSESSMENT OF BILLBOARD PROPERTIES

On November 13, 2002, the Board of Equalization adopted the enclosed guidelines pertaining to the assessment of billboard properties. Board staff drafted these guidelines in consultation with interested parties and, after discussions, two unresolved issues remained for Board decision. Those issues were:

(1) Whether in applying the income approach to value, operating income may be used in estimating the income to be capitalized.

(2) Determination of language regarding the treatment of special use permits necessary to site a billboard improvement. The Board decided that (1) the use of operating income is disfavored because of the difficulty in isolating the income attributable to the taxable property, and (2) since a billboard use permit is necessary to put the land to beneficial and productive use as a billboard site, the land must be assessed and valued by assuming the presence of the use permit.

We hope this information proves useful and promotes uniformity of assessment for these properties. If you have any questions, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,
/s/ David J. Gau
David J. Gau
Deputy Director
Property and Special Taxes Department

ASSESSMENT OF BILLBOARD PROPERTIES

DESCRIPTION OF BILLBOARDS

Billboards, or off-premise outdoor advertising signs, make advertising space available to advertisers for display to the public. These signs do not advertise the business or other activity occurring at the site on which the billboard is located. The larger and most common types of billboards are usually located on leased property adjacent to freeways, highways and other major thoroughfares.

Almost all billboards are owned by billboard companies. Billboard companies offer display space on their billboards to advertisers for a fee. The billboard companies also place and remove the advertisements and may design and produce the advertising copy, although this function is usually performed by the advertiser's advertising agency.

Advertising space is often marketed for a group of billboards rather than for a single billboard. These group sales are called "showings." Billboard companies know approximately how many people see each of their billboards each day and their demographic attributes. Using this information, the companies are able to configure their billboard inventories into showings that provide a specified level of advertising exposure for various advertisers' target markets.

A billboard is essentially a frame supported by a pole (or poles), to which a display panel is attached on one or both sides. Sometimes a billboard is mounted to a building or other structure rather than being free standing. Almost all newly constructed billboards are made of steel and are designed to modern engineering standards. They are structurally secured to the land on a permanent foundation.

Billboards come in four standard configurations: "juniors" (standard panel size 6 x 12 feet); "posters" (standard panel size 12 x 25 feet); "bulletins" (standard panel size 14 x 48 feet, sometimes slightly smaller); and "spectaculars" (billboards built to order, with unique shapes and features, typically as large or larger than bulletins).

The billboard site—that is, the land on which the billboard is situated—is generally limited to an area large enough to accommodate the billboard's foundation and to allow for service and maintenance of the billboard. As noted above, the billboard owner generally holds a leasehold interest in the billboard site; fee simple ownership in the billboard site is usually held by an unrelated party that owns the land contiguous to the billboard site.

CLASSIFICATION OF BILLBOARDS

Billboards are properly classified as fixtures under Property Tax Rule 122.5(a)(1), which defines a fixture to include an item of tangible property which is "physically or constructively annexed to realty with the intent that it remains annexed indefinitely." In general, billboards are affixed to the ground, are moved infrequently, and are

intended to remain annexed until the leasehold interest in the land terminates. These circumstances require that billboards be classified as fixtures.

BILLBOARD PROPERTY COMPONENTS AND APPRAISAL UNIT

The appraisal unit refers to the nature and extent of the property being valued. For property tax purposes, unless the law specifically provides otherwise, the appraisal unit is the unit of property commonly bought and sold.¹

The sale of a billboard property normally includes the following: (1) the *billboard improvement* (i.e., the sign and its foundation); (2) the *billboard use permit (or permits)*, which allows the billboard owner to construct and operate the billboard; and (3) the *leasehold interest* in the land, or billboard site. These three elements constitute the billboard appraisal unit, designated here as the *billboard property*. The ground lessor's interest in the billboard site (i.e., the interest held by the fee owner of the billboard site) is a separate appraisal unit.

APPROACHES TO VALUE

Where the entire billboard property is subject to reassessment, then any of the three generally accepted approaches to value may be used.² Discussed briefly below are the cost approach, the comparative sales approach (using a gross income multiplier, or "GIM"), and the income approach, using direct capitalization with a sales-derived overall capitalization rate.³ However, as a practical matter, the appraiser will in most cases be valuing the billboard improvement in isolation using the cost approach. The land (i.e., the leasehold interest in the billboard site) would generally be subject to reassessment only upon a transfer of the lessor's interest. Thus, in most cases the appraiser will have no need to request either income data from the billboard operator or lease data from the landowner in order to develop an indicator of value under either the income or comparative sales approaches.

COST APPROACH

Applying the cost approach to a billboard property involves the following steps:

1. Estimate the cost new of constructing and siting the billboard improvement.

¹ See Revenue and Taxation Code section 51, subdivision (e); Property Tax Rule 324; and Assessors' Handbook Section 502

(AH 502), *Advanced Appraisal*, (December 1998), pp. 2-5.

² For additional information concerning the approaches to value generally, see Assessors' Handbook Section 501, *Basic*

Appraisal, AH 502, or a general appraisal text. As provided in Property Tax Rules 4, 6 and 8, one approach to value may be preferred over other approaches if reliable data necessary for applying the other approaches to value is not available or when certain factors make the other approaches less reliable.

³ Where the entire billboard property is subject to reassessment, assessors may rely upon the same authorities for gathering relevant assessment data about billboard

properties as are relied upon for other types of property. Such authorities include the general requirement, under section 441 of the Revenue and Taxation Code, that persons make available to the assessor information or records regarding his or her property. With respect to billboard properties, the assessor may request a timely filed property statement (Form BOE-571-L) showing all taxable billboard property, including its location and description, that is owned, claimed, possessed, controlled, or managed by the company.

2. Estimate the depreciation incurred by the billboard improvement.⁴
3. Subtract the estimated depreciation from the cost new to arrive at the depreciated cost of the billboard improvement.
4. Estimate the value of the leasehold interest in the billboard site held by the billboard company.
5. Add the value of the leasehold interest in the billboard site to the cost new less depreciation of the billboard improvement to arrive at a value indicator for the billboard property.⁵ The estimated cost new should reflect the full economic cost of creating the substitute billboard improvement, comprising direct ("hard") costs, indirect ("soft") costs, and entrepreneurial profit.⁶

Cost data may be obtained from property statements filed by billboard companies or from contractors who construct billboard improvements.

In all approaches, the value of intangible assets and rights must be excluded from the final value indicator for the taxable property. In general, this adjustment is unnecessary in the cost approach because in that approach intangible assets and rights typically are not included as components of the appraisal unit.⁷

COMPARATIVE SALES APPROACH—GROSS INCOME MULTIPLIER

In direct sales comparison, a value indicator is developed by comparing a comparable property to the subject property and adjusting the sale price of the comparable property for differences between it and the subject.⁸ Billboard properties, however, typically sell in groups, and there is little data regarding sales of individual billboard properties. This makes it difficult to apply direct sales comparison to billboard properties.

Since sales of individual billboard properties rarely occur, it may be more practicable to use a gross income multiplier (GIM) derived from a sale of a group of billboard properties. The GIM method is commonly used within the billboard industry as a means of evaluating purchases and sales of billboard properties.

In some instances, it may be possible to develop a GIM from a sale by dividing the sale price by the annual gross advertising income which a group of billboard properties generate.

4 As with other improvements, billboards are subject to three forms of depreciation, or loss in value: physical deterioration, functional obsolescence, and external obsolescence. In typical practice, the depreciation of a billboard improvement is estimated using age-life depreciation, or percent-good tables. Assessors' Handbook Section 581 (AH 581), *Equipment Index and Percent Good Factors*, contains tables of index and percent good factors for various types of fixtures. It is recommended that Table 1 ("Commercial Equipment Index Factors") and Table 4 ("Machinery and Equipment Percent Good Factors") from AH 581 be used to estimate cost new less normal depreciation.

5 Steps 4 and 5 are necessary only when the land has undergone a change in ownership pursuant to the provisions of subdivision (c)(1) of Revenue and Taxation Code section 61, and Property Tax Rule 462.100, subsections (a)(1) and (a)(2).

6 Revenue and Taxation Code section 401.6 requires market-derived evidence of entrepreneurial profit when the cost approach is used to value special use property.

7 AH 502, p. 159, fn. 126.

8 See Revenue and Taxation Code section 402.5; Property Tax Rule 4; and AH 502, Chapter 3. In the case of a billboard property, if the ground lease does not reflect market rent, it is also necessary to adjust the comparable sales data for this element.

Using GIMs in the assessment of a billboard property, however, will produce excessive taxable values unless significant, and sometimes subjective, adjustments are made.⁹ This occurs because GIMs are derived from the total advertising income generated by a group of assets which are often found in multiple counties, including non-billboard property and non-taxable assets (such as intangible billboard use permits). In addition, the advertising income generated by a group of billboard properties will usually include non-assessable "synergy" value which results from operating group of billboards.

Gross income multipliers should be used only when the reported sale is very similar to the subject billboard property, and the reported sale must be adjusted in order to make it closely comparable to the subject billboard property in terms of income potential, expense ratios, location and physical characteristics.¹⁰

The derived income multiplier should be based on the taxable value of the billboard property (or properties) only. Thus, when deriving an income multiplier the following adjustments should be made to the reported sale price, as applicable:

- Convert any noncash consideration accepted by the seller as all or part of the purchase price to its cash equivalent amount.
- Remove the estimated value of any real property included in the sale that is not part of the billboard plant (i.e., billboard properties) from the reported sale price (e.g., an office building or shop/maintenance facility).
- Remove the estimated value of any personal property included in the sale from the reported sale price (e.g., equipment, furnishings, and automobiles).
- Remove the estimated value of any intangible assets or rights (i.e., use permit value and enterprise value) included in the sale from the reported sale price.

INCOME APPROACH—DIRECT CAPITALIZATION

In the income approach, rental income is preferred to operating income, since operating income may be attributable, in part, to nontaxable property or other sources. There are several types of income associated with billboard properties, including income from the lease of a billboard improvement to a billboard operator (this rarely occurs). Billboard advertising income equivalent to operating income and should not be used.¹¹

Once the anticipated future income is estimated, appropriate deductions for vacancy and collection loss, commissions to advertising agencies, and operating expenses are made to arrive at net income. Operating expenses include painting and production (poster installation), maintenance, electricity, management, insurance, and recurring permit fees (not use permit fees).

⁹ AH 502, p. 160.

¹⁰ AH 502, p. 81; Property Tax Rule 8, subsection (h).

¹¹ Property Tax Rule 8, subsection (e). Although income attributable solely to taxable billboard property might be imputed excluding income related to nontaxable operating assets, this technique is disfavored because of the difficulty in making the deductions necessary to identify the discrete income stream for the taxable property only. AH 502, pp. 162, 164.

After net income is determined, an appropriate capitalization rate must be developed. An overall capitalization rate can be derived from a sale of a comparable billboard property (or group of comparable billboard properties). The rate is then applied to the subject billboard property (or group of billboard properties) to generate the value indicator.

INTANGIBLE ASSETS AND RIGHTS

The siting, construction, and operation of billboard properties is regulated by the Outdoor Advertising Act and/or by county or municipal ordinances.¹² The Outdoor Advertising Act or these local laws (or both in some instances) control the issuance of billboard use permits. State and local governments have used these laws to limit the number of billboards in many areas. By regulating (i.e., limiting) the number of billboard use permits, government has increased the value of existing billboard properties. The value resulting from the scarcity of billboard use permits should be attributed to the use permits and not to the billboard improvements.

The billboard use permit is an intangible asset or right under Revenue and Taxation Code section 110(e) that is necessary for the beneficial and productive use of the billboard property. Since the use permit is an intangible asset or right that is not itself assessable, any increment of value attributable to the use permit must not be included in the taxable value of the billboard property.¹³ However, since a billboard use permit is necessary to put the land to beneficial and productive use as a billboard site, the land must be assessed and valued by assuming the presence of the use permit.¹⁴

In addition to the billboard use permit, intangible assets or rights that may need to be considered for the purpose of removing any increment of value attributable thereto include relationships between a billboard company and advertisers or advertising agencies; assembled work force of a billboard company; the marketing activities associated with the ownership of multiple billboard properties (e.g., the ability to market billboard display space as "showings"); and company reputation, or "goodwill."

Location must be considered in assessing billboards. The impact of location on the income which a particular billboard generates, or the price at which that billboard sells, can be considerable.

This impact results from the "traffic count" or "exposure" that a particular location provides. However, a higher traffic count has little or nothing to do with a particular billboard improvement, but derives from the land on which the billboard improvement is situated (i.e., location). In assessing the billboard property, the value attributable to location should be assigned to the land and not to the billboard improvement.

ALLOCATION OF VALUE TO BILLBOARD PROPERTY COMPONENTS

The value of the billboard property should be allocated between the land (i.e., the leasehold interest in the billboard site) and the billboard improvement in the following manner.

¹² In regard to the Outdoor Advertising Act, see Business and Professions Code section 5200, et seq.

13 AH 502, pp. 152, 163.

14 See Revenue and Taxation Code section 110, subdivision (e); AH 502, pp. 154-155.

1. Estimate the value of the billboard property net of the value of non-taxable intangible assets and rights, including the value of the billboard use permit. This establishes the taxable value that is to be allocated.

2. Estimate the value of the billboard improvement based on its cost new less depreciation.

3. Subtract the estimated value of the billboard improvement from the value of the billboard property and allocate this remainder to the land. In other words, all value of the billboard property in excess of the billboard improvement's depreciated cost should be allocated to the land as a residual. This method of allocation is consistent with the billboard's classification as a fixture and its status as a separate appraisal unit.

The portion of the value of the billboard property that is allocated to the land may or may not be assessable depending on the terms of the ground lease. In order to reassess the value allocated to land, a change in ownership of the land under article XIII A ("Proposition 13") must have occurred.¹⁵

As discussed above, typically there are two interests in the billboard site: (1) the leased fee interest of the ground lessor (i.e., the interest held by the fee owner of the billboard site) and (2) the leasehold interest of the ground lessee (i.e., the interest held by the billboard company's interest). Only the second interest, the leasehold interest in the billboard site, is part of the appraisal unit designated as the billboard property. The value of both interests in land, however, should be included in a single assessment to the owner of the fee interest in land. In other words, a separate land assessment should not be created for the billboard company's leasehold interest in the billboard site. (And as noted, any value attributable to the billboard company's leasehold interest in the billboard site only becomes assessable if there has been a change in ownership of the billboard site.)¹⁶

¹⁵ See subdivision (c)(1) of Revenue and Taxation Code section 61, and Property Tax Rule 462.100, subsections (a)(1) and (a)(2).

¹⁶ Two other assessment issues concerning billboards should be briefly discussed. First, a number of billboard properties are located within railroad rights of way, raising the jurisdictional question of whether these properties should be state or locally assessed. In general, all property that is owned or used by a state assessee is assessed by the Board. As with other billboard properties, the entire value of the billboard site should be assessed to the fee owner of the billboard site, in this case, the state assessee. Thus, the only component of a billboard property that should be locally assessed is the billboard improvement. The second issue concerns billboard properties that are also taxable possessory interests. A billboard property that

constitutes a taxable possessory interest should be valued as any other taxable possessory interest.

- ❑ Property Appraisers Use Cost Approach to Value Billboards; Guidelines Need Updating: A Florida Case Study

At a glance

Almost all (66 of 67) Florida county property appraisers assess billboards for ad valorem tax purposes and classify them as tangible personal property. Those that appraise billboards use the replacement cost approach to determine value. Most (63) also use the replacement cost approach to value similar types of commercial businesses on leased land. These appraisal methods are similar to those used by other states we contacted.

Florida county property appraisers use a variety of depreciation schedules in estimating billboard value. Although the Department of Revenue has developed guidelines that include recommended depreciation schedules, the guidelines are outdated and are followed by only 27 counties. This raises concern as to whether billboards are being equitably appraised throughout the state.

The department should adopt new appraisal guidelines for appraising billboards that include up-to-date depreciation schedules and residual values.

Purpose

In accordance with a directive by state law, this report examines how Florida county property appraisers value offsite signs or billboards for ad valorem tax purposes.^{1, 2}

Our review addressed five questions.

- Are county property appraisers assessing billboards for ad valorem tax purposes?
- What methods are county property appraisers using to assess billboards?
- How do the methods used to assess billboards compare to the methods used to assess other commercial tangible personal property structures on leased land?
- How do Florida practices for assessing billboards compare to other states?
- How can the approaches used to appraise billboards be improved?

Background

State law authorizes counties, school districts, municipalities, and some special districts to levy ad valorem taxes on real and tangible personal property. Ad valorem

¹ Chapter 2002-13, *Laws of Florida*, directed OPPAGA to conduct a study of the value of offsite signs in relation to, and in comparison with, the valuation of other commercial properties for ad valorem tax purposes, including a comparison of tax valuations from other states.

² An offsite sign is one that advertises products, services or activities not conducted or performed on the same site upon which the sign is located. An onsite sign advertises a business, product, or, service on the property where the sign is located. A billboard is not an on-site sign.

taxes represent a major source of funding for local governments. County property appraisers assess the value of property, and local governments use these assessments to determine the ad valorem taxes property owners must pay. To ensure that taxpayers are treated equitably within and among counties, the Florida Constitution and state law require that county property appraisers assess property uniformly and at just value.³

Two types of property are subject to taxation—real property and tangible personal property used in businesses. Real property refers to land, buildings, fixtures, and all other permanent improvements to land. Tangible personal property can be moved without damaging the item or real property, and includes business equipment such as computers, machinery, or furniture but excludes vehicles, inventory, and household goods. Owners of tangible personal property used in business are required to file annual tax returns estimating the property’s fair market value. County property appraisers review these tax returns to discover if there are any errors and omissions, and place an assessed value for the property on the county’s tax rolls.

The Department of Revenue supervises county property appraiser activities to ensure that all property is placed on county tax rolls and uniformly assessed at just value. Department oversight extends to both real property and tangible personal property.

Offsite signs, or billboards, are subject to being appraised for ad valorem tax purposes. Billboards are often located on property leased from landowners. Florida has a relatively large number of billboards. While the exact number of billboards statewide is unknown, the Florida Department of Transportation maintains a database that includes 14,843 billboard structures located throughout the state.^{4,5}

Questions and Answers

Are county property appraisers assessing billboards for ad valorem tax purposes?

Almost all of Florida’s county property appraisers assess billboards for ad valorem tax purposes. Our survey of the 67 county property appraisers found that 66 reported assessing billboards for ad valorem tax purposes. Lafayette County, a small rural county, is not assessing any billboards, although the Department of Transportation database lists four billboard structures located in the county. The county property appraiser reported that his office is currently looking into this matter.

³ Florida courts have defined “just value” as the fair market value of property, reflecting the amount that an individual willing but not obligated to buy, would pay to someone who was willing but not obligated to sell.

⁴ Federal law requires the Florida Department of Transportation to issue permits for billboards located within 660 feet of the right-of-way of all portions of an interstate or federal-aid primary highway or those portions of the state highway outside a municipality.

⁵ The department’s database does not include billboards located on local roads that are not part of the state highway system. Due to the decentralized nature of related data, it is prohibitively complex to precisely determine how many billboards exist in Florida.

What methods are county property appraisers using to assess billboards?

All county property appraisers that appraise billboards classify them as tangible personal property rather than real property because billboards can be moved without damaging the structure and are often located on leased land.

Each of the 66 Florida county property appraisers that report appraising billboards use the replacement cost approach rather than the two other approaches—the sales approach and the income approach. The replacement cost approach involves estimating the cost of replacing a billboard less an allowance for depreciation. The sales approach involves estimating the value by comparing the subject billboard to the prices for similar billboards that have recently sold. Finally, the income approach involves estimating the net income expected from a billboard and capitalizing that net income over a period of time.

County property appraisers reported their reasoning for not using the sales or income approaches.

- Information on the sales price of individual billboards is difficult to obtain. The value of individual billboards is often unknown because billboards are usually sold in groups so that the buyer can attain a desired amount of advertising coverage in a geographic area.
- Outdoor advertising companies are not required to report rates charged for using a specific billboard. Companies contend that divulging rate information would provide an advantage to competitors.

How do the methods used to assess billboards compare to the methods used to assess other commercial businesses on leased land?

Most (63) of the county property appraisers that appraise billboards report they only use the same replacement cost approach to assess similar types of commercial tangible personal property on leased land.⁶ Three property appraisers reported that they usually use the cost approach to assess similar types of commercial tangible personal property, but also will use the income approach when sufficient information is available.

How do Florida's practices for assessing billboards compare to other states?

Eight other states we contacted classify billboards as tangible personal property, the same policy followed by Florida's property appraisers.⁷ Seven of these states also use the replacement cost approach to assess billboards for ad valorem tax purposes.

⁶ Examples of these other commercial properties included cellular phone towers and portable buildings.

⁷ These states included Alabama, California, Georgia, North Carolina, New York, Pennsylvania, South Carolina, and Texas. These states were selected to allow us to compare Florida county property appraisers' methods to those used in other populous states and other Southern states.

The remaining state, Pennsylvania, does not appraise billboards because the state does not have a tangible personal property tax.⁸

How can the approaches used to appraise billboards be improved?

Florida's methods of appraising billboards could be improved by developing consistent depreciation schedules and residual values. This would help ensure equitable appraisals of billboards among the counties.

Depreciation schedules vary widely

When appraising billboards, county property appraisers use schedules that specify the number of years a billboard is to be depreciated and its residual value.⁹ There is wide variation among county property appraisers in the number of years they use to represent the useful life of a billboard for depreciation purposes (range from 9 to 40 years) with 20 years as the period preferred most frequently and used by 39 counties. There is also wide variation among the county property appraisers in how they calculate the residual value of billboards at the end of their useful life, ranging from 0%, in which the billboard is considered to have no value after depreciation, to 40% of the billboard's estimated replacement cost. Well over half (44) apply a 20% residual value. (See Exhibit 1.)

Exhibit 1

County Property Appraisers that Appraise Billboards Use a Wide Range of Depreciation Schedules and Residual Values

Depreciation Schedules		Residual Values	
Years	Counties	Percentage	Counties
9	1	0%	1
10	15	16%	1
12	3	20%	44
15	1	21%	1
20	39	30%	11
25	2	30.4%	1
30	3	31%	3
35	1	40%	4
40	1		
	66		66

⁸ In Pennsylvania, outdoor advertising companies pay a gross receipts tax on the revenue they receive from billboard advertising. In addition, the party owning the land on which the billboard is located pays a higher ad valorem tax due to the income they receive from the billboard company for leasing the property.

⁹ Depreciation is used to measure the loss in value of a property over its useful life. The residual value represents the value of a property remaining after it has been depreciated.

Source: OPPAGA survey of county property appraisers. Florida has 67 counties. Lafayette County is excluded from the exhibit because it reported that it had no billboards.

As a result of these variations, billboards may not be assessed on an equitable basis among the counties. This can be illustrated by two identical billboards located in different counties that are both 10 years old with a replacement cost value of \$50,000. If County A uses a 10-year depreciation schedule and 20% residual value, while county B uses a 30-year depreciation schedule and a 30% residual value, the billboard in County A will have a taxable value of \$10,000 while the billboard in county B will have a taxable value of \$36,000 at the end of ten years. If both counties have a tax rate of 10 mills, the billboard owner in County A would pay \$100 in ad valorem taxes, while the billboard owner in County B would pay \$360 in taxes.

Although the Department of Revenue has developed guidelines to assist county property appraisers in appraising tangible personal property, including billboards, most counties are not following these guidelines.¹⁰ The department's guidelines recommend that county property appraisers depreciate billboards for 20 years and use a residual value of 20%. However, only 27 county property appraisers reported that they use both the department's recommended depreciation period and residual value in appraising billboards.

A related problem is that department guidelines are outdated. The depreciation schedules and residual values in the department's guidelines were taken from tables published by Marshall & Swift, a private company that provides appraisal information. These tables were based on information from surveys of billboard companies conducted by the U.S. Department of the Treasury in the late 1970s and published in the early 1980s. However, large monopole billboards, which represent the most common type of billboard currently being used in Florida, were just beginning to be used in the 1970s.¹¹ Representatives of three companies that manufacture billboards told us that metal monopole billboards should have a useful life of 40 to 70 years if properly constructed and maintained. Consequently, the department's recommended 20-year depreciation schedule is not applicable to contemporary billboard structures. In contrast, the state of North Carolina has developed guidelines recommending a 40-year depreciation schedule for steel structure billboards and a 35% residual value.¹²

¹⁰ Florida law (ss. 195.032 and 195.062, *F.S.*) directs the Department of Revenue to develop standard measures of value containing guidelines to assist the county property appraisers in valuing property. However, the standard measures of value do not establish the just value of any property and are to be used only to assist the county property appraisers.

¹¹ A monopole is a billboard structure having a single steel pole as the primary support.

¹² These guidelines were developed in 1988 through a collaborative effort involving the North Carolina Department of Revenue, property appraisers, and the outdoor

Conclusions and Recommendations

All but one of Florida county property appraisers assesses billboards for ad valorem tax purposes. The 66 that assess billboards classify them as tangible personal property and use the replacement cost approach to determine value. Appraisers use a wide variety of depreciation schedules in estimating a billboard's value. Although the Department of Revenue has developed guidelines that include recommended depreciation schedules and residual values, the guidelines are outdated and are used by only 27 counties. This raises concern as to whether billboards are being equitably appraised throughout the state.

To help promote equitable billboard appraisals, we recommend that the Department of Revenue revise the depreciation schedule and residual values provided in its current tangible personal property guidelines to better reflect the useful life span of modern billboard structures. The department should develop these revisions in consultation with the county property appraisers and the outdoor advertising industry. As noted previously, the department's guidelines presently recommend a 20-year depreciation schedule for billboards and a residual value of 20%.

advertising industry in that state. The North Carolina Department of Revenue is presently conducting a study to determine if it needs to update these guidelines.

State of New Jersey Letter

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
RICHARD J. CODEY DIVISION OF TAXATION
JOHN E. McCORMAC, CPA
PO BOX 251
TRENTON, N.J. 08695-0251

February 2005

TO: HOLDERS OF THE REAL PROPERTY APPRAISAL MANUAL FOR NEW JERSEY ASSESSORS

A new **“Assessment of Billboards”** section is being introduced to the “COMMERCIAL SPECIFICATIONS” section. This sub-section consists of pages 71.01 – 71.24 and should be inserted in Volume II of the Real Property Appraisal Manual of New Jersey Assessors. For municipalities with base year values of 2005 (assessing date October 1, 2004) the cost conversion factor of 1.00 is to be used on the Billboard Valuation Worksheet, page II – 71.24.

CAUTIONARY NOTE:

For municipalities with a base year other than 2005, a cost conversion of 1.00 is to be used to arrive at a 2005 value. **This 2005 value must then be adjusted to the base year by the application of the Director’s Ratio to the value.**

Sincerely,

Thomas J. Reilly

Thomas J. Reilly, Chief
Field Assistance Section
Enclosure

Tax Relief

By Eric Rubin, Counsel to OAAA (Originally printed in the December 2002 OAAA Legal Report)

The monthly *OAAA Legal Report* for June 2002, “When a Property Tax Becomes a Taking”, discussed the evolving issues surrounding the appraisal of billboards for tax assessment purposes. At the time, a proceeding was underway before the California State Board of Equalization (the “SBE”) that brought into focus the collision between condemnation valuation and property tax appraisal methodology that was occurring in that state.

Earlier this month, the SBE and an agency of the Florida legislature issued separate reports that provide the industry with the solid authority it has needed to support the application of the cost approach as the only valid method for property tax appraisal of outdoor advertising signs. Of course, in outdoor advertising as in life, the “law of unintended consequences” always lurks in the background, and as helpful as these new governmental analyses may be, they could give rise to new issues over the longer term. The good news first:

1. California - On December 3, 2002, the California State Board of Equalization concluded its comprehensive review of billboard assessments, issuing new guidelines for the assessment of billboard properties to county tax authorities within the state. The billboard appraisal issue was first brought to the SBE’s attention through a petition from the California OAA, after several major tax jurisdictions appraised billboards using an “adjusted” Gross Income Multiplier. The result was a series of county property tax bills that were little more than ill-disguised income tax assessments. The new SBE guidelines deride the use of GIM as a methodology for billboard tax appraisal:

“The Board has decided that the use of operating income is disfavored because of the difficulty in isolating the income attributable to the taxable property”.

The Comparable Sales approach is similarly dismissed:

“Billboard properties, however, typically sell in groups, and there is little data regarding sales of individual billboard properties. This makes it difficult to apply direct sales comparison to billboard properties.”

The SBE makes it clear that the Board’s endorsement of the cost approach is driven by its conclusion that much of the value of billboards is not attributable to the physical structure, but rather to two intangible factors. First, the Board reasons that much of the intrinsic value of a billboard is based on “the scarcity of billboard use permits” due to restrictive regulation. But since use permits are an intangible asset, the incremental value derived from the permit cannot be included in assessment of these fixtures.

Likewise, the SBE emphasizes that while the traffic count attributable to a specific location is also a major determinant of value, this also is an intangible that is distinct from the physical sign structure. Accordingly, the SBE recognizes the cost approach as the easiest and most realistic valuation methodology for the billboards under California law.

2. Florida - Last spring, in enacting Florida's landmark compensation law (see monthly OAAA Legal Update for April, 2002), the Florida legislature also directed its Office of Program Policy Analysis and Government Accountability ("OPPAGA") to conduct a study of whether billboards were being properly assessed for ad valorem tax purposes in the state. Earlier this month, OPPAGA issued a draft of its Special Review for public comment. The Review reports on the results of a comprehensive study of billboard assessment practices employed by the sixty-seven counties in Florida, and compared those practices to the appraisal methods used in seven other states.

OPPAGA reports that all counties in Florida classify billboards as "tangible personal property used in business" rather than as "fixtures", on the basis that "these structures can be moved without damage". The Florida Special Review further reports that every county appraises billboards using the cost approach. Six out of seven of the other states studied also adopt the cost method for property tax appraisal.¹³

OPPAGA concludes that the cost method is the appropriate property tax appraisal method in Florida, and takes issue with the GIM and comparable sales methods. However, OPPAGA also concludes that there is a wide variation in the depreciation schedules being applied by various counties to determine the useful life of billboards. The Special Review finds that the Department of Revenue's current depreciation guidelines, first issued in 1988, are outdated and that a 20 year life and a 20% residual value for billboards may no longer be valid. Therefore, the Special Report recommends that the Department of Revenue should revise its schedules to reflect contemporary construction practices and materials, citing in particular the use of steel monopole construction for many new billboards in Florida.

The California and Florida reports are important. They demonstrate the inappropriateness – if not the clear illegality – of applying GIM or Comparable Sales methods in a property tax context. The SBE Guidelines have already resulted in acknowledgments by several California counties that prior billboard assessments will now be revised retroactively. Moreover, since both states are to some degree considered bellwether jurisdictions for outdoor advertising regulation, the cumulative impact of these two reports will have significant precedential impact in other jurisdictions. So, what about the law of unintended consequences?

¹³ / Those states are Alabama, California, Georgia, North Carolina, New York, South Carolina and Texas. Pennsylvania has a gross receipts tax but does not impose a tax on tangible personal property.

The California SBE Guidelines state clearly that the intrinsic value derived from off-site permits and billboard locations should be assigned to the underlying land. Likewise, one county in Florida has notified some billboard lessors of its intention to re-assess their land to reflect its unique value as a location for off-premise signs.

Nevertheless, these types of reassessments of land raise their own issues, and at least at this juncture, the threat is not entirely immediate. Under California's renowned "Proposition 13", a reassessment of land may only be undertaken when there is a change in ownership. And even in Florida, the focus of most counties will in all likelihood fall first on the revision of depreciation schedules. In any event, the reassessment of billboard locations must occur on a case-by-case basis and will raise many new issues. For example, one inventive plant manager has suggested that at least in some instances, a long term billboard lease is actually an encumbrance that operates as to reduce valuation.

For now, its safe to say that the industry would have been very pleased, if at the time that the June OAA Legal Report was published, we knew we would be this far along by December.

Trends in the Property Tax Valuation of Commercial Outdoor Advertising Structures

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BY CRIS K. O'NEALL AND BRADLEY R. MARSH

Cris K. O'Neall, Esq. is a principal attorney with Rodi, Pollock, Pettker, Galbraith & Cahill, A Law Corporation in Los Angeles, California. **Bradley R. Marsh, Esq.** is an associate attorney with the same. Mr. O'Neall and Mr. Marsh both specialize in representing property owners in property tax assessment matters.

Their firm is a member of the southern California member of the American Property Tax Counsel.

*The Cost Approach Is Becoming the Preferred Method for **Ad Valorem** Taxation of Billboards in Many Jurisdictions*

OUTDOOR ADVERTISING STRUCTURES, or billboards, are complex properties, and their valuation for property tax purposes is a topic of interest for both taxing authorities and billboard owners and operators nationwide. In past years, the valuation discussion has been both academic and theoretical. Authors analyzed and sought to apply legal and appraisal theories in an attempt to discern how these structures should be categorized and assessed. This early discussion resulted in wide variances in assessed values due to the absence of uniform valuation practices in many states.

Recently, however, state taxing agencies and local assessors have taken definite positions on how to value these properties and a national trend has emerged. In the administrative arena, fundamental decisions have been made on nearly all of the major issues. This article focuses on the assessment of outdoor advertising in several states with large billboard populations. It also discusses the outdoor advertising industry, summarizes the major historical areas of contention, and analyzes the ad valorem assessment approaches now employed in leading states.

The Outdoor Advertising Industry

Although there is no definitive count, experts estimate that there are approximately 390,000 outdoor advertising structures nationwide.² Billboards are found in every state except Alaska, Hawaii, Maine and Vermont.³ Most outdoor advertising signs are located in metropolitan areas and along highways.

These structures are generally owned by national or regional outdoor advertising companies.

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Billboard owners generate income by selling space for the dissemination of advertising messages. Billboards carry off-premise or off-site advertisements: that is, they disseminate commercial and non-commercial messages unrelated to the site on which the sign is located.

Aside from displaying their customers' messages, outdoor advertisers provide several other distinct services including: (a) identifying and obtaining sites for new signs, (b) marketing and sales development, (c) planning "showings" that meet advertisers' needs and budgets, (d) maintaining signs using a trained workforce which posts, removes or rotates displays, (e) maintaining performance records and, in some cases, (f) assisting with the advertising design and production of displays. In addition, some outdoor advertising companies provide services through other advertising mediums, which allows their clients to advertise through radio, television, and in print.

Outdoor Advertising Signs

Most outdoor advertising structures are supported by wood, steel I-beams or a steel monopole. They are also mounted on the sides or tops of buildings and in other locations, and they are often lighted. Billboards are found in a variety of locations and are generally built to standard dimensions using wood or steel. Perhaps the most common type of billboard is the large "bulletin" with a "face" or panel up to fourteen feet high and forty-eight feet wide mounted on one or more poles. The "poster" (12 feet high by 24 feet long) and the "junior poster" (6 feet high by 12 feet long) are also prevalent standards in the outdoor advertising industry. Though posters and junior posters still use them, in recent years, printed and painted displays on bulletins have been replaced by images printed on vinyl sheets which are stretched across the face of the sign structure.

Billboard owners typically lease the land upon which their billboards are located. The lease is generally limited to an area large enough to accommodate the billboard and to allow for service and maintenance. Such ground leases are usually for a period of ten years. The great majority of these agreements provide for a flat rental amount per month, although some landowners negotiate percentage leases. Billboard ground leases normally contain clauses stating that the billboard situated on the land does not belong to the landowner. The standard ground lease also provides that the billboard owner or the tenant may terminate the lease with limited notice for specified reasons.

Billboard Advertising

Regional and national owners and operators of billboards often enter into standardized contracts with advertisers for advertising space (called a "showing") within a designated geographic market area for a specific period of time or for a

group of specific sign locations. This occurs primarily in metropolitan markets, although within a metropolitan area the market may be segmented, which allows advertisers to market in a portion of a metropolitan area.

Advertising contracts between advertisers and billboard companies are either brokered by advertising agencies or solicited directly by billboard companies. The advertiser does not typically select the specific billboards on which its advertising message will be shown. Rather, the advertiser requests a particular level of exposure ranging from 25 to 100 Gross Rating Points (“GRPs”). Each GRP represents exposure of one percent of the population to the advertiser’s message each day; for example, a “25 GRP showing” would mean that 25% of the population is exposed to the advertiser’s message daily. A “showing” is based, in part, on measurement data given to individual signs by the Traffic Audit Bureau for Media Management (“TAB”).

This measurement data is determined through analysis of traffic counts, population, and other information. Billboard companies generally assemble multi-sign packages of billboards (from six to thirty or more “faces”) in the desired geographic region to satisfy an advertiser’s GRP requirements (which may include rotating the advertiser’s message among a variety of different signs). The agreement between an advertiser and billboard company will be for a package of billboards, usually for a period of weeks or months.

Assessment and Valuation of Billboards

When a billboard property is subject to *ad valorem* property tax assessment, any of the accepted approaches to value, income, sales, or cost, may be used. In the past, there has been disagreement, however, about which method or methods should be applied. Given the unique character of billboard property⁴ and outdoor advertising industry practices, a method was needed that accurately reflected the value of the *tangible taxable property* while avoiding the inclusion of related intangible assets and rights (e.g., permits and advertising contracts), most of which are specifically exempt from property taxation in many states.⁵

Income Approach

While outdoor advertising structures are purchased for their capacity to generate income, it is difficult to identify the income solely attributable to the tangible taxable property (*i.e.*, structure), particularly since advertising income is generated, in large part, by permits, advertising contracts and other non-taxable intangibles. Assigning an exact worth to an individual billboard is also a challenge because advertisers often purchase showings on multiple billboards. In addition, where the owner of the billboard structure differs from the owner of the land underlying the structure, further difficulties arise in segregating income attributable to the structure from income generated by the land on which the structure is situated. Consequently, in order to employ an income approach to value billboards, an appraiser must find a way to properly assign value to an individual billboard, to effectively eliminate the value attributable to non-taxable intangibles, and to segregate total value between the structure and the land. In most cases, it is not possible to use an income approach in a way which satisfies these multiple concerns.

Sales Approach

The concerns stated above apply equally to use of the sales approach to value billboards. A sale of a sign structure will likely include intangible assets which will need to be extricated from the sale price. If the sale was for both the structure and land, the sale price may need to be allocated between these two types of property. In addition, most billboard sales include more than one sign, which necessitates allocating a total purchase price among individual structures.

Add to this the fact that billboard sale prices usually rely on the advertising revenues that multiple sign showings may generate (revenues which include returns to tangible and intangible assets), and the complexity and difficulty of using the sales approach or a sales price becomes obvious. When an appraisal using sales of *other* billboards as comparables is contemplated, the problems are further multiplied. Application of the sales approach is fraught with numerous difficulties, all of which militate against use of this approach for property tax valuation of billboards.

Cost Approach

The cost approach is the most suitable method for valuing billboards as it avoids nearly all of the pitfalls inherent in the other valuation approaches. First, the cost approach ignores the income generated by a sign or group of signs, and thus avoids including in a billboard's value any increment of value attributable to income generated by nontaxable intangible assets and rights associated with the billboard or a group of billboards. In the same vein, the cost approach does not consider the "synergy" value created by multiple billboards, but looks to the reproduction or replacement cost for each individual advertising structure. Because the cost approach focuses on valuing the individual sign structure and avoids inclusion of intangibles which are inherent in billboard revenues and billboard sales (e.g., permits and advertising contracts), it is the best way of determining value for the *ad valorem* taxation of outdoor advertising structures.

Cost Approach Elements

The key elements for application of the cost approach are (1) cost new and (2) depreciation. Cost new is usually based on reproduction or replacement cost, and can be determined by analyzing actual construction costs or construction cost indices developed by recognized costing services. Depreciation includes both typical wear-and-tear due to the age of a sign structure as well as obsolescence caused by various sources such as an outdated sign structure or method of operation, changing traffic patterns or government regulation.

Billboard Assessment Practices in Major States

Several states have adopted regulations, or promulgated standards, for the property taxation of outdoor advertising structures. For the reasons stated previously, the taxing authority in each of these states has concluded that the cost approach is the most appropriate method for valuing billboards. Because most of these states have

significant billboard populations, the practices in these states are indicative of a national trend in the valuation and assessment of billboards for property tax purposes.

California

Created in 1879 by a constitutional amendment, the California State Board of Equalization (“CA SBE”) is charged with insuring uniformity in the assessment practices of California’s 58 county assessors. One of the many ways in which the CA SBE accomplishes this is by issuing guidance publications to county assessors and taxpayers. These statements do not have the force of law, but are generally considered to carry “great weight.”⁶

In May 2002, in response to lack of uniformity in assessments and a growing number of local property tax appeals, the CA SBE began the process of establishing guidelines for the assessment of billboards. Industry representatives, local assessors, and CA SBE staff met informally to draft guidelines for billboard assessments. After several meetings over a six month period and a formal hearing, “Guidelines for the Assessment of Billboard Properties” (“Guidelines”) were promulgated by the CA SBE on December 3, 2002.⁷

The majority of the Guidelines is dedicated to valuation.⁸ Three generally- accepted approaches to value were considered: the cost approach, the comparative sales approach (using a gross income multiplier), and the income approach (using direct capitalization with a sales-derived overall capitalization rate). Although the guidelines state that any of the three approaches theoretically could be used, the CA SBE determined that the appraiser should, in most cases, use the cost approach to value billboards for property tax purposes.

The cost approach was preferred because, of all the approaches, it excluded value relating to intangibles. In California, as in many states, intangibles are not taxable.⁹ The approach was also seen as administratively efficient. As noted earlier, it is often difficult to isolate the value of an individual billboard because billboards sell in groups and advertising is sold by demographic or market area.

Under the Guidelines, a cost new value is given to the property, depreciation is subtracted, and the value of land is determined (using comparable sales) and added. Calculating the cost new requires consideration of both hard and soft costs. Hard construction costs for outdoor advertising signs (superstructure, foundation, and infrastructure) vary depending on size and location. Soft or indirect costs may include identification and procurement costs. These vary from sign to sign and by locality. There is also a requirement that the costs re erect typical hard and soft costs.¹⁰

After estimating cost new, the Guidelines instruct that the billboard be depreciated. This is done using the depreciation schedule for machinery and equipment published by the CA SBE. The Guidelines, however, do not indicate the expected life of a billboard and, as of this writing, this issue has not been resolved.

The Guidelines do not favor the sales approach because it is difficult to apply as billboards generally sell in groups. Although large numbers of billboards have sold either on the market or as a part of the sale of an entire billboard company, these “bulk” sales have not generally attributed value directly to the tangible property as those terms are understood in the property tax context. This problem is further complicated by the fact that outdoor advertising structures are usually sold in conjunction with assignments of leasehold estates or possessory interests, and not with the fee interest in the land on which they are situated. In addition, the Guidelines note that serious and sometimes unquantifiable subjective adjustments must be made to comparable sales. This is because outdoor advertising companies buy and sell billboards based, at least in part, upon the amount of advertising that the signs generate. This income stream, however, represents a return on both the hard assets as well as value attributable to management and labor, advertising contracts, goodwill and other intangible assets and rights which are not taxable.

The Guidelines warn that gross income multipliers should only be used when the reported sale is very similar to the subject billboard property, and the reported sale must be adjusted in order to make it closely comparable to the subject billboard property in terms of income potential, expense ratios, location and physical characteristics. When it is used, many adjustments should be made, including removing the value attributable to non-billboard assets, and intangible assets and rights. Finally, the income approach was disfavored in the Guidelines because the majority of advertising is sold based on showings. When a showing is sold, there is not an allocation of income to a particular billboard. Because of this, it is difficult to get accurate data on an individual billboard. If an income approach is used, the Guidelines indicate that rental income is preferred to operating income, since operating income relates to intangibles and other non-taxable property (e.g., advertising contracts). Further, the Guidelines state that billboard advertising income is equivalent to operating income and should not be used.

Florida

The Florida Department of Revenue supervises county property appraisers to ensure that property is fairly and uniformly assessed at “just value.” The Department of Revenue and Florida courts interpret “just value” to mean the fair market value of property, the value it would bring in an open market sale between a willing buyer and a willing seller, neither obligated to complete the transaction.

In December 2002, the director of the Department of Revenue received and concurred with the recommendations of a study on billboard appraisal done by the Florida Office of Program Policy Analysis and Governmental Accountability (“OPPAGA”).¹¹ Among recently completed OPPAGA projects is a special review entitled “Property Appraisers Use Cost Approach to Value Billboards; Guidelines Need Updating.”¹² In the report, OPPA OPP GA surveyed Florida’s counties to discover how just value is determined in their assessment of outdoor advertising structures.

The agency determined that of Florida's 67 counties, 66 counties used the replacement cost approach to assess billboards, rather than the income or sales approaches. The county appraisers stated among their reasons for using the cost approach that:

[I]nformation on the sales prices of individual billboards is difficult to obtain. The value of billboards is often unknown because billboards are usually sold in groups so that the buyer can attain the desired amount of advertising coverage in a geographical area.¹³

In addition, the appraisers used the cost approach because of difficulty in obtaining sales rate information. The OPPAGA report also disclosed that, in applying the cost approach, Florida assessors use depreciation schedules with residual values to determine the value of outdoor advertising structures.¹⁴

Although there is some variation, the great majority of counties use a 20 year schedule with a 20% residual value. A minority of counties use a 10 year schedule and/or a 30% residual value. This depreciation method is consistent with a majority of states and Section 179 of the Internal Revenue Code.

Ohio

All the powers, duties and functions of the Ohio Department of Taxation are vested in a Tax Commissioner who is appointed by the Governor and confirmed by the Ohio Senate. The Tax Commissioner is responsible for, among other things, promulgating tax rules and regulations. In the performance of this duty, annual guidelines and other types of advice are published. While these administrative interpretations are not law, they are given deference by the courts.¹⁵

The Ohio Department of Taxation annually issue a booklet entitled "Guidelines for Filing Ohio Personal Property Tax Returns" ("Ohio Guidelines").¹⁶ The purpose of the booklet is to apprise the public of the manner in which personal property taxes are levied in Ohio. The Ohio Guidelines indicate both what is personal property and how to value it for tax purposes using designated classifications and corresponding depreciation schedules. In the 2003 edition of the Ohio Guidelines, as in earlier editions, outdoor advertising signs are designated as personal property.

The tax on personal property is calculated using "true value." The true value system has been used for more than 60 years and has repeatedly been approved by the Ohio courts. True value accepts as prima facie evidence the value that is determined by calculating book cost less depreciation. This value is used unless evidence to the contrary is brought by the Tax Commissioner or taxpayer to show that the depreciated book value is greater or less than the true value of such property. As a part of the true value determination, the class of a particular type of property must be determined. Each class of property is valued using a different depreciation schedule. The Ohio Guidelines categorize outdoor advertising signs as a Class II property: Machinery and Equipment Used in Manufacturing. Under Class II, billboards are depreciated over 10 years and have a 20% residual value.

Texas and North Carolina

Texas law gives the State Comptroller's Office the authority to advise local governments on property tax issues. In carrying out that duty, the Comptroller publishes appraisal manuals and other administrative materials. Among those materials is a Field Appraisal Manual, published annually.

For a number of years, the Texas Comptroller's Field Appraisal Manual ("Manual") has included a special billboard valuation section.¹⁷ The stated purpose of the Manual is to improve efficiency and consistency in county appraisals. The Manual's billboard valuation section was taken, almost verbatim, from the North Carolina Department of Revenue's Billboard Valuation Guide ("Guide").¹⁸ North Carolina originally developed the Guide in 1988 through a collaborative effort among industry representatives, property appraisers, and North Carolina Department of Revenue staff. As such, North Carolina was an early leader in the property tax assessment of outdoor advertising structures.

In its introduction, the Guide discusses some of the inherent difficulties in appraising billboards including "determining the owner of the real property, where the sign is located, as well as various terms, etc., of ground leases." For this reason, the Guide states that billboards are personal property.

According to the Guide, outdoor advertising signs are valued using the replacement cost new approach. The Guide, however, differs from the majority of states in that it determines replacement cost based on tables and charts rather than historical cost multiplied by a factor. For instance, the Guide determines the class of the billboard by the size of the face. Each billboard class is costed out at a different price per square foot. There are also adjustments for such things as the sign's height above ground, whether it is lighted, and other aspects of its construction.

Sign values are determined by calculating the replacement cost new and then depreciating the cost. Wood signs are depreciated over 20 years, while metal signs are depreciated over 40 years. In either case, the Guide provides for a 35% residual value. The Guide also provides that functional obsolescence, physical deterioration, and external obsolescence must be measured and factored into the final value. In addition, residual value is mitigated by adjustments that are left to the judgment of the local appraiser.

Wisconsin

The Wisconsin Department of Revenue oversees the collection of local taxes. The Department of Revenue has four major roles in property tax assessment. Among those roles are establishing local standards, equalizing values and ensuring local assessment compliance.

In Wisconsin, there are seven classes of real property and four classes of personal property. Assessors are required to segregate property into one of these classes.

Outdoor advertising signs are, for property tax purposes, categorized in a miscellaneous personal property category called “all other personal property,” although one Department of Revenue publication refers to billboards as “items classified as personal property for various reasons, but have similarities to real property.”¹⁹

A Statement of Personal Property must be filled annually by property owners. As a part of that filing, the taxpayer declares the value of a billboard. The taxpayer is told to use Department of Revenue publications that depreciate billboards over 10 years using a minimum percent good, or residual value, of 13.2%.²⁰

Conclusion

Because intangibles are exempt from taxation in most states, the emerging trend in assessment practice is to use the cost approach. None of the jurisdictions with large billboard populations have put into practice a system that suggests any other approach would be acceptable.

In fact, many states have warned that income and the comparative sales approaches tend to include intangible value and fail to overcome problems caused by analyzing advertising revenues generated by multiple billboards. In short, other methods are inefficient.

In applying the cost approach, almost all leading jurisdictions call for use of a cost new based on actual construction costs, either as reported by the billboard owner or using construction cost indices. In addition, states with larger billboard populations use straight line depreciation.

Billboard lifetimes and the minimum percent good figures fall within fairly narrow ranges. North Carolina and Texas have adopted a split approach, using 20 years for wood and 40 years for steel. A few other states have used 10 year trend tables. The great majority of states, however, and the Internal Revenue Code, give billboards a 20 year life. Most states have also concluded that 20% is a reasonable estimate of residual value.

The preceding survey of the states with the largest billboard populations demonstrates several emerging trends. Most notably, the cost approach is gaining broad acceptance. In addition, most outdoor advertising structures are assessed using straight-line depreciation over a 20 year life, and are assigned a 20% minimum percent good or residual value.

References

1. See generally, Sutte, D., *Appraisal of Outdoor Advertising Signs*, American Institute of Real Estate Appraisers, 1972; Floyd, C., “Issues in the Appraisal of Outdoor Advertising Signs,” *The Appraisal Journal* (July 1983), p. 422; Sutte, D., *The Appraisal of Outdoor Advertising Signs*, Appraisal Institute, 1994.

2. Outdoor Advertising Association of America, "Number of Outdoor Displays/Vehicles" (2003) (available online at: <<http://www.oaaa.org/outdoor/facts/number2002.asp>>).
3. Fennessy, "Why Aren't Texas Highways Scenic? It's the Billboards," *Montgomery County News* (January 22, 2003) (available online at: <<http://www.montgomerycountynews.net/walden01-22-03.htm>>); Editorial, "Checking the Burgeoning Billboards," *Tampa Bay Tribune* (Aug. 31, 1998) (available online at: <<http://www.scenicflorida.org/pubs/bbedburgeoning.html>>); Scenic America, "The Highway Beautification Act: A Broken Law" (a series available online at: <<http://www.ewg.org/reports/billboards/billboards.html>>).
4. An outdoor advertising structure can be classified as either personal property or real property. Academics and commentators have attempted to sort out the answer by applying definitions from the Appraisal Institute or state law. *The Appraisal of Real Estate*, 11th ed., discusses the difference between real property and a trade fixture (business personal property): *Although . fixtures are real estate, trade fixtures are not. A trade .fixture, also called a chattel .fixture, is an article that is owned and attached to a rented space or building by a tenant and used in conducting a business. Trade .fixtures are not real estate endowed with the rights of real property ownership. They are personal property regardless of how they are affixed* (Appraisal Institute, *The Appraisal of Real Estate*, 11th ed., Appraisal Institute, 1996, *Estate* p. 9.) In analyzing the above definition, there are three criteria used: (1) the manner in which the item is affixed, (2) the character of the item and its adaptation to the real estate, (3) and the intention of the party who attached the item. However, because these definitions are relatively subjective and broad, the classification tests have proven inconclusive. Further, in recent years, the classification of billboards as either personal or real property has not been the primary issue in how they are to be valued in most jurisdictions.
5. Washington Department of Revenue, Property Tax Exemption of Intangible Assets (December 2000); Steele and Silverstein, *BNA Tax Management*, "Property Management Taxes: The Exemption for Intangibles."
6. *Yamaha Corp. of America v. State Board of Equalization* (Ct. Appeal Calif., 1999) 73 Cal.App.4th 338, 344-45.
7. Cal. State Bd. of Equalization, Letter to Assessors No. 2002/78 (Dec. 3, 2002) (available online at: <<http://www.boe.ca.gov/proptaxes/pdf/lta02078.pdf>>).
8. The Guidelines do, however, consider the classification of billboards, which are categorized as fixtures, a subset of real property under California property tax law. The CA SBE reasoned that billboards were fixtures because billboards were affixed to the ground, moved infrequently, and were intended to remain annexed to the land indefinitely.
9. See endnote 5; California Revenue & Taxation Code, §§ 110(d)-(f) & 212.
10. Cal. State Bd. of Equalization, Letter to Assessors No. 2002/78 (Dec. 3, 2002), p. 3 (available online at: <<http://www.boe.ca.gov/proptaxes/pdf/lta02078.pdf>>).
11. Created in 1994, the Florida OPPAGA was established to provide objective, independent, professional analyses of state policies and services to assist the Florida

Legislature. It helps the legislature with decision-making and ensures government accountability. The OPPAGA produces a variety of work products.

12. OPPAGA, Report No. 02-69, "Property Appraisers Use Cost Approach to Value Billboards; Guidelines Need Updating" (December 2002).

13. See endnote 12.

14. Residual value is the value which remains after a billboard is fully depreciated using a depreciation table. Residual values arise because depreciation tables do not go to 100% when a billboard reaches its maximum useful life.

15. *McCormack v. Limbach*, 1988 Ohio App.. LEXIS 348 (Ohio Ct. App. February 4, 1988, Decided); Ohio Revenue Code, § 5715.01.

16. Ohio Department of Taxation, "Guidelines for Filing Ohio Personal Property Tax Returns" (January 2003).

17. Texas Comptroller, "Field Appraisal Manual" (2002) (available online at: <<http://www.window.state.tx.us/taxinfo/proptax/proptax.html>>).

18. North Carolina Department of Revenue, "Billboard Valuation Guide" (2001); See also, Wagner, J. and D. Baker, "The Valuation of Outdoor Advertising Structures: A Mass Appraisal Approach," *Assessment Digest*, vol. 14, no. 4 (*Digest* July/August 1991), p. 2.

19. Wisconsin Legislative Fiscal Bureau, "Study of the Treatment of Personal Property Under the Property Tax" (September 2002), p. 16.

20. Wisconsin Department of Revenue, "Statement of Personal Property" (2004).

When a Property Tax Becomes a Taking

By Eric Rubin, Counsel to OAAA (Originally printed in the June, 2002 OAAA Legal Report)

A proceeding currently underway before the California Board of Tax Equalization brings into focus the question of whether the industry's efforts to secure realistic valuation in condemnation proceedings is inconsistent with its efforts to secure valuations in property tax valuations. Or in other words, do industry claims for just compensation based on the Gross Income Multiplier or Comparable Sales become a trap when addressing property tax issues?

In California, billboards are subject to local assessment by county assessors. However, a rule or advisory opinion by the Board of Equalization carries great weight, and can be the deciding factor in decisions by County Boards of Assessment Appeals. So the stakes are high in the Board of Tax Equalization's current review of the assessment of billboards. In what is clearly a coordinated effort, at least eleven California counties are aggressively defending the application of the Gross Income Multiplier or Comparable Sales valuation principles to billboards in the Board of Tax Equalization proceeding.

In a way, it's hard to blame the counties for taking their aggressive stance. There are no specific California authorities that address the valuation of billboards for property tax purposes. But this vacuum is filled by a large body of literature on the subject of billboard valuation, including a considerable amount of material produced by the billboard industry itself favoring valuation approaches based on capitalized earning and comparable sales. The Counties say they are doing nothing more than relying on the industry's own valuation theories. The assessors argue, how can billboard companies advocate an expansive measure of valuation when they seek compensation from the government, and yet argue that the same valuation should not be followed when it is they who must pay a tax based on the value of their signs. The trouble with the assessor's position is that it relies on a false analogy.

The fact is that when billboard valuation is addressed in appraisal literature that analysis arises in the eminent domain context. But eminent domain principles simply have no applicability to property tax valuation, because condemnation proceedings are fundamentally different from property tax assessments. Condemnation is by definition the wholesale expropriation by government of a property owner's ownership rights. Thus in order to make a property owner whole, condemnation encompasses far broader valuation elements, which in the case of business property, must include a host of intangibles that make up the enterprise value of the property and reflect lost investment. The purpose of eminent domain is to compensate the owner for the loss of all economic use of his property and the destruction of his investment-backed expectations.

The intrinsic nature of a property tax is quite different. Local authorities are empowered to tax the intrinsic value of a specific piece of property, not the broader business value, goodwill, and other intangibles that turn the bare property into a

commercial enterprise. The incidence of a property tax falls on the value of the structure alone - and the only way to measure it is by the depreciated cost approach, which is predicated on hard costs directly associated with the construction of the specific sign. Once the focus of property tax valuation moves beyond that narrow purview, it is no longer a property tax and instead has been transformed into an unauthorized income tax, or a sales tax.

There are also very practical reasons why GIM and comparable sales cannot properly be applied under the law in a property tax context. Even the most aggressive assessor would concede that the income approach should not be applied to property tax violations without at least some adjustments. Some assessors attempt to factor out the non-taxable intangible value by deducting management expenses on some pro rata allocated basis, contending that this exercise removes enterprise value from the equation. It's a novel idea, but to anyone other than an assessor, it makes little sense. Even the State of California recognizes that there are a lot more tangible and intangible items than expenses that contribute to enterprise value; a simple example is goodwill. Indeed, the expense deduction approach involves a complex, and ultimately impossible analysis where county-by-county, different billboards with expense factors that may vary not only between billboards but also between different owners would have to be analyzed. Moreover, how do you allocate individual value to specific signs when the income stream for a particular sign face may be a function of that sign's contribution to a "showing" in a market that very likely encompasses multiple taxing jurisdictions, and may even include more than one state, to say nothing of the fact that different signs have differing advertising value depending on their location.

The industry's position is supported by the California Court of Appeals, which has held that non-taxable intangible assets must be identified and stripped from property tax valuations. *GTE Sprint Communications Corp. v. County of Alameda*, 26 Cal. App. 4th 992 (1993). Likewise the Court has ruled in a non-billboard context that the cost approach to value is the best method for isolating out non-taxable intangible assets and rights in determining assessed value. *County of Orange v. Orange County Assessment Appeals Board*, 13 Cal.App.4th 524 (1993). This precedent is also reflected in the *California Assessor's Handbook*, which provides that: "The cost approach does not typically capture the value of intangible assets and rights..." AH-502 p. 159, n.129. But the Board of Equalization has significant discretion and there is always some way to distinguish even the most supportive precedent, particularly in an administrative context where the Board is considering an advisory letter rather than rulemaking. What is clear is that the Board's resolution of the property tax valuation issue has a major economic impact on the industry in California, and beyond.