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Judge lifts freeze on V.I. property taxes

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ST. THOMAS - The lengthy legal battle over the territory's property tax system ended this week when District Judge Curtis Gomez lifted the injunction freezing V.I. tax values and rates at the 1998 level.

He made the decision after a settlement agreement was signed Jan. 7 by the government and the group of commercial property owners who sued the territory more than a decade ago.

"This litigation had a long, and to some, a tortured history," Gomez wrote in his opinion filed late Thursday night.

The property owners' lawsuit claimed that the government's tax system was unfair and unconstitutional. A settlement agreement was reached in 2000, but after three years of inaction by the government, the plaintiffs returned to court.

In 2003, the court ruled in the property owners' favor, issuing an injunction freezing property tax valuations at 1998 levels - the last set of values the court deemed fair. The court also ordered the government to reevaluate all property in the territory using fair market value and demonstrate that it has a functioning Tax Review Board.

During the dispute, portions of the injunction were lifted, but the last piece was to bring the taxpayer appeal process into compliance with Constitutional requirements for due process.

Quoting Shakespeare and case law in his opinion, Gomez wrote that the V.I. government has experienced a "positive sea change" and the Tax Review Board is now functioning as it should.

"When this litigation commenced, the Government's operations were woefully deficient. Due process did not attend the Board's operations. In the face of these deficiencies, planned improvements seemed always to die aborning," Gomez said.

But it would be unfair to assume the government is incapable of change based on its history, Gomez said.

"Indeed, something rich and heretofore uncommon, evolved. The Board did precisely what the Constitution mandates. It demonstrated that it was capable of affording taxpayers due process," he said.

Finance Commissioner Angel Dawson Jr., who also serves as chairman of the Board of Tax Review, called Gomez's opinion "poetical." Dawson plans to have that section engraved onto a plaque to hang in the board's office as a reminder of what they have accomplished, he said.

When Dawson took over the board in 2009, it had a serious backlog of tax appeals - some of which were more than 10 years old. New members were appointed to the board, which began to clear the backlog. By early 2010, the board was current with appeals, yet Gomez was not satisfied and denied the government's motion to lift the injunction.

In May and June hearings, Gomez heard testimony from taxpayers who went through the appeal process. In December, he heard more evidence on the functionality of the board.

Before the December hearing, the plaintiffs withdrew their opposition to lifting the injunction. A mediator - visiting District Judge Timothy Savage - came to the territory from Pennsylvania to work with both sides to come up with a new settlement agreement.

James Derr, the attorney representing seven of the 22 plaintiffs, said Savage essentially locked everyone in the room and would not let them leave without an agreement.

"He wouldn't let us leave the room. We had to hand-write the settlement agreement," Derr said.

"He was a very skilled mediator," Dawson said.

The settlement agreement is a compromise, but Derr and Dawson said that they were comfortable with the document.

"I think it's fair to everybody; it's certainly got a lot of protections for the taxpayer," Derr said.

Under the agreement:

- The Tax Review Board hearing examiner's report will be given to the taxpayer before the hearing.
- The taxpayer shall be notified of the hearing and the right to appear and present objections.
- If the board fails to make a decision 120 days after an appeal has been filed, the appeal automatically will be granted and the assessed value will revert to the prior year's assessed value.
- If there is a continuance in a board proceeding, the parties may agree to give the board an additional 30 days to make a decision. If the taxpayer refuses the request, the board has the right to advise the taxpayer that unless consent is given, the appeal must be denied without consideration.
- The 1998 property values and tax rates shall continue for the 2007, 2008, 2009 tax years.
- The governor will submit legislation to the V.I. Senate to extend the waiver of interest and penalties for six months on the 2009 tax year bills.
- The plaintiffs will withdraw their appeal currently before the 3rd U.S. Circuit Court of Appeals.
- The court retains jurisdiction to decide pending attorney's fees motions.

Under the agreement, the government will not be able to collect property taxes using fair market values or the new tax rate structure - made law in 2007 - until the 2010 tax year. Because the government did not issue any tax bills at all for four years, taxpayers will receive two years' worth of bills each year until the bills are current. The 2010 tax bill will not be issued until 2012.

While getting rid of the injunction will help the government collect more revenue in the long run, the territory's financial problems will not be solved immediately. Dawson said the Fiscal Year 2011 budget already depends on collecting the 2007 and 2008 property taxes at the 1998 levels, and that does not change with the court ruling.

Once the government begins to use fair market values to assess taxes in 2010, its ability to borrow money will increase dramatically.

Dawson said the territory's debt ceiling is linked directly to the territory's property values. The Virgin Islands can float General Obligation bonds that are backed by anticipated tax revenues, but the territory can only borrow 10 percent of the total real property value in the territory.

Under the 1998 assessments, the total value of property is \$9 billion, and the territory's debt ceiling is \$900 million. The Virgin Islands' General Obligation debt currently is at about \$800 million, Dawson said. Once the new assessments are in place, the debt ceiling could be raised to about \$1.6 billion.

The bonds issued in the past two years are backed by rum revenues, not property tax revenues, and do not factor into the debt ceiling.

"I don't want this to be construed as a green light for more borrowing, however," Dawson said, adding that the government has no plans to borrow in the near future.

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2000 - Commercial property owners sue the government, saying that assessing commercial property based on the estimated replacement cost of a building is unconstitutional. According to a 1936 federal law, real estate tax must be assessed at "actual value," the plaintiffs say.

Sept. 21, 2000 - The court orders the government to stop assessing commercial property taxes using replacement cost value.

Dec. 19, 2000 - The court approves an agreement called the "Berne Settlement," named after the first plaintiff listed in the lawsuit. In the agreement, the government promised to implement a new real property assessment system.

May 12, 2003 - District Judge Thomas Moore finds that the V.I. government breached the Berne Settlement and orders it to establish a system that assesses property based on actual value and demonstrate to the court that the Tax Review Board is functional. The injunction prohibits the government from issuing any property tax bills. The government appeals to the 3rd U.S. Circuit Court of Appeals.

June 13, 2003 - The V.I. government asks the U.S. Supreme Court to throw out the District Court's May ruling. The Supreme Court declines the petition in October.

Aug. 14, 2003 - Moore lifts the ban on tax collection but mandates that the government use 1998 assessments and rates.

April 15, 2004 - Moore approves the government's signing of a \$6.5 million contract with Virginia-based Bearing Point to perform the territorywide property revaluation.

June 28, 2004 - The 3rd Circuit Court upholds the 2003 injunction.

June 29, 2007 - Congress repeals the 1936 law and makes it retroactive to July 22, 1954. In response to the action, the V.I. government files a motion to vacate the injunction.

Oct. 2, 2007 - Gov. John deJongh Jr.'s administration unveils a property tax structure proposal that abolishes the previous flat-rate system, creating different property categories, each with different tax rates.

Feb. 7, 2008 - The V.I. Senate passes a revised version of deJongh's property tax plan.

March 10, 2008 - Gov. deJongh signs the bill into law.

May 30, 2008 - The Board of Tax Review meets to hear appeals. For years the board could not reach a quorum, causing a backlog.

August 2008 - The V.I. government issues 2006 property tax bills using the new valuations and tax structure, even though the injunction remains.

Sept. 11, 2008 - District Judge Curtis Gomez orders the government to rescind the 2006 property tax bills. The government appeals to the 3rd Circuit Court.

Sept. 18, 2008 - Gomez finds the V.I. government to be in contempt of court for issuing the 2006 bills.

Oct. 10, 2008 - The 3rd Circuit Court postpones the contempt order and will expedite the hearing.

May 13, 2009 - DeJongh issues an executive order stating that the 2006 bills will be due in July, even though the injunction still is in place.

July 13, 2009 - DeJongh signs an executive order invalidating the 2006 property tax bills.

June 16, 2009 - The 3rd Circuit Court upholds Gomez's contempt order against the V.I. government.

Sept. 17, 2009 - Gomez rules he will not fine the government for issuing the 2006 bills in violation of the 2003 injunction.

Feb. 17, 2010 - Gomez refuses to lift the injunction and suggests that the government issue 2006 bills at the 1998 rates.

March 10, 2010 - The V.I. Senate passes a bill to permit the government to issue tax bills for 2006, 2007, 2008 and 2009 at the 1998 assessment level and tax rate. Q: How does the court ruling affect my 2006 property tax bill?

A: It does not change the amount for the 2006 bills, which were issued last year using the 1998 values and rates. The 2006 bills are currently past due and will begin to accrue interest and penalties after Feb. 16.

Q: When can I expect the remainder of my tax bills?

A: The 2007 tax bills will be issued in February, using the 1998 property values and tax rate. The 2008 bills will be issued this summer and also will be at the 1998 level. The 2009 and 2010 bills will be sent out in 2012.

Q: Will the 2010 tax bill be at the 1998 property tax levels?

A: No. The 2009 bills will be at the 1998 level, but the 2010 bills will be based on the updated property values and the new tax rates.

Q: Will the 2010 bills reflect the 2006 property values done by contractor Bering Point?

A: Not exactly. The Tax Assessor's office will update the property values in the territory using the mass appraisal system developed by Bearing Point, taking into consideration changes in real estate trends. The 2010 bills will be based on 2009 and 2010 property values.