

## The Supreme Court Speaks; Some Taxpayers Shudder

---

January 16, 2013

Elliott B. Pollack, Esq.

*Commercial Property Executive*

Property owners frequently raise legitimate questions about hard-to-fathom differences between assessments of similar properties, as well as the failure of municipal and county assessors to equalize values. Property owners may question the constitutionality of such unreasonable governmental actions in court. Attorneys, however, have long counseled clients that attempting to toss out an assessment, or a valuation system, on constitutional grounds is a very steep hill to climb. The U.S. Supreme Court underscored the accuracy of this advice last June in a rather prosaic piece of litigation involving sewer assessments.

The city of Indianapolis' policy to pay for sewer construction and line extensions was to apportion the cost among abutting lots. After assessing the initial project, the city divided the cost among the number of affected lots. The city also made adjustments to reflect differences in lot size and configuration. Upon completion of the project, each lot received a final assessment. So far, so good.

Once in receipt of the proposed assessment, a lot owner could choose to pay the amount due in a lump sum or in installments, a choice typically given to property owners facing capital assessments in most U.S. jurisdictions.

One particular sewer extension project affected 180 Indianapolis homeowners; 38 chose to pay their obligations at once, and the remainder opted for installments.

Just one year later, the city abandoned the lot apportionment assessment methodology, instead adopting a complicated payment plan based on project bond financing, which need not be discussed here. The key to the new system was that it reduced the liability of the individual lot owners affected by this project.

This was good news for the 142 homeowners who had opted for the installment payment plan, but it went over like a lead balloon for the 38 homeowners who had paid in full. Why? Because in the course of adopting the new financing plan, the city forgave all remaining installments owed under the old format but did not attempt to make refunds to those homeowners who had paid in full.

Understandably upset that they did not receive the same financial consideration that the installment payers received, the lump sum payers initiated refund litigation. The property owners met with initial success but lost the case in the Indiana Supreme Court, which ruled that the city had a rational basis for forgiving the remaining installment payments. Among the reasons the city offered, and the court approved, was a

---

**[pullcom.com](http://pullcom.com)**  [@pullmancomley](https://twitter.com/pullmancomley)

**BRIDGEPORT**  
203.330.2000

**HARTFORD**  
860.424.4300

**SPRINGFIELD**  
413.314.6160

**STAMFORD**  
203.324.5000

**WATERBURY**  
203.573.9700

**WESTPORT**  
203.254.5000

**WHITE PLAINS**  
914.705.5355

## The Supreme Court Speaks; Some Taxpayers Shudder

---

reduction in the city's administrative costs because the cost of calculating refunds to the lump sum payers and making refunds did not warrant doing so. The city also indicated an interest in providing financial relief to the installment payment homeowners.

The homeowners took their case to the U.S. Supreme Court, which agreed to hear their appeals.

The Supreme Court concluded that as long as "there is any reasonably conceivable state of facts which could provide a rational basis for the decision" made by Indianapolis, it was constitutional. This thinking is in keeping with a long line of rulings that make it clear the justices are almost always unwilling to wade into the tax-fairness swamp. Commentators suggest that this reluctance is based on the court's perception that once it starts deciding whether a particular tax or tax refund plan is constitutional, it will be deluged with hundreds of cases from all over the country. As a result, the court has developed a jurisprudence that requires it to defer broadly to the judgment of local taxing authorities, except in extreme circumstances.

It was not of constitutional moment, the court decided, that the Indianapolis lump-sum payers were stuck for the full amount of their assessments while the installment payers received forgiveness reductions. Terminating the installment payers' obligations to make their remaining installments, the court observed, permitted the city to avoid "maintaining an administrative system for years ... to collect debts arising out of (many different construction) projects involving monthly payments as low as \$25 per household."

The fact that Indianapolis authorities were concerned about potential financial hardships that might be suffered by certain installment payers if their remaining obligations were not forgiven stuck in the craw of the lump sum payers and probably made them wonder why the city did not think of their potential financial hardship, as well. Nevertheless, the Supreme Court ruled that the "city's administrative concerns are sufficient to show a rational basis" for its action.

Once the court discerned a rational basis, it refused to take its fairness and constitutional analysis any further.

The June 4, 2012, ruling was signed by Justices Breyer, Kennedy, Thomas, Ginsburg, Sotomayor and Kagan. Justices Scalia and Alito joined Chief Justice Roberts' vigorous dissenting opinion.

*Elliott B. Pollack is chair of the Property Valuation Department of the Connecticut law firm Pullman & Comley L.L.C. The firm is the Connecticut member of American Property Tax Counsel, the national affiliation of property tax attorneys. He can be reached at [ebpollack@pullcom.com](mailto:ebpollack@pullcom.com). This article was reprinted from the CPE.*

## The Supreme Court Speaks; Some Taxpayers Shudder

---

### **Professionals**

Elliott B. Pollack

### **Practice Areas**

Property Tax and Valuation

---

This publication is intended for educational and informational purposes only. Readers are advised to seek appropriate professional consultation before acting on any matters in this update. This report may be considered attorney advertising. To be removed from our mailing list, please email [unsubscribe@pullcom.com](mailto:unsubscribe@pullcom.com) with "Unsubscribe" in the subject line. Prior results do not guarantee a similar outcome.