

Restoring The Foundation: Assessing Construction In Progress

November 2, 2012
Tiffany Kouri Spinella
Connecticut Law Tribune

Legislature Amends Statutes, Overrules Court Decisions

This supplements the article published on March 5, 2012 entitled "Changing the Foundation: Assessing Construction in Progress."

The last article presented an extensive history of the assessing of construction in progress by municipalities for property tax purposes, the tumultuous changes occurring in the law, and the numerous questions to be addressed.

This article serves to answer *some* of those questions and leave you with a couple more.

Brief Background

The first of October of every year is assessment day. Of course, not all real estate construction in progress is completed by this deadline. Thus, Connecticut assessors observed the practice of assessing the percentage complete of new construction on the assessment date. When the construction was completed thereafter, a supplemental prorated tax bill would be issued to account for the completion of the new construction.

Two Superior Court decisions called this practice into question. In the 2009 decision of *Evans v. Town of Guilford*, the court ruled that the assessor had improperly assessed construction in progress and that new construction could not be assessed *until complete*. In the 2011 decision of *Kasica v. Town of Columbia*, the court adopted the *Evans* decision and held that the assessor should have only assessed the land value and not the construction in progress.

During the February 2012 legislative session, two bills were proposed to address assessing construction in progress. One passed.

New Legislation

On June 15, 2012, Gov. Dannel Malloy signed Public Act No. 12-157, as passed by the Connecticut Legislature, entitled "An Act Concerning Property Tax Assessments By Municipalities."

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

BRIDGEPORT | **HARTFORD** | **SPRINGFIELD** | **WAKEFIELD** | **WATERBURY** | **WESTPORT** | **WHITE PLAINS**
203.330.2000 | 860.424.4300 | 413.314.6160 | 401-360-1533 | 203.573.9700 | 203.254.5000 | 914.705.5355

Restoring The Foundation: Assessing Construction In Progress

This public act amended not one, but three statutes (Connecticut General Statutes §§12-53a, 12-62c and 12-64), sending the clear message that the caselaw described above has been overruled and Connecticut assessors' former practice is reinstated.

Connecticut General Statutes § 12-53a was the statute that the *Evans* and *Kasica* courts primarily relied on to hold that only newly completed construction could be assessed – not construction in progress. Thus, not surprisingly, the amendments to this statute provide the clearest guidance.

Subsection (a) of this statute is now divided into two subsections: one which addresses supplemental tax bills for newly completed construction and the other which addresses partially completed construction.

Connecticut General Statutes §12-53a(a)(1) has been clarified to provide that a supplemental prorated tax bill is to be issued "based on the assessed value of such *completed* new construction." (emphasis added).

Connecticut General Statutes §12-53a(a)(2) states that "[p]artially completed new construction of real estate shall be liable for the payment of municipal taxes based on the assessed value of such partially completed new construction as of October first of the assessment year."

Assessor Instruction

The next amendment was to Connecticut General Statutes §12-62c. This statute concerns the "municipal option to phase in assessment increases resulting from [the] revaluation of real property." The modified language simply comports with the amended section § 12-53a(a) and instructs an assessor as to how to determine the assessment of newly completed construction as part of a phase in of a real estate revaluation.

Finally, to ensure there was no question as to whether partially completed construction could be assessed, Connecticut General Statutes § 12-64 was amended as well. This statute sets forth property in a municipality that must be assessed on each Grand List. This list was amended to specifically include "improvements that are partially completed or under construction."

One caveat to the foregoing amendments is that they are prospective, and *not* retrospective. The amendments are "effective Oct. 1, 2012 and applicable to assessment years commencing on or after said date."

In light of the legislative decision to make these amendments only prospective, a taxpayer may be inclined to pursue a property tax appeal of an assessment of construction in progress on a Grand List *prior* to Oct. 1, 2012.

However, unless a taxpayer currently has an appeal pending with the court, this is not an option. In Connecticut, there are two avenues to pursue a property tax appeal – Connecticut General Statutes § 12-117a and/or 12-119. The time period for appealing an assessment, on a Grand List prior to Oct. 1,

Restoring The Foundation: Assessing Construction In Progress

2012, under either of these statutes has passed.

Lingering Issues

The *Kasica* decision is presently under appeal and set for oral argument in the third term of the Supreme Court's docket (November/December 2012). The remaining questions are:

- Will the Supreme Court uphold the trial court's decision as it was prior to the recently passed legislation?
- Will the Supreme Court expound upon the recently passed legislation?

Tiffany Kouri Spinella is an attorney in the Property Valuation and Litigation departments at Pullman & Comley LLC. She would like to thank attorney Gregory F. Servodidio for his assistance with this article.

Reprinted with permission from the November 5th issue of Connecticut Law Tribune. ©2012 ALM Properties, Inc. Further duplication without permission is prohibited. All rights reserved.

Practice Areas

Litigation

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 with "Unsubscribe" in the subject line. Prior results do not guarantee a similar outcome.