

## Businesses win millions in appeals of property taxes

BY Terry Ganey  
Jefferson City Bureau Chief

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JEFFERSON CITY — Few people in Missouri know the name of W.B. "Bart" Tichenor. As the chief hearing officer of the state Tax Commission, he occupies a quiet niche in the state's tax collection system.

But county assessors around Missouri and people in the St. Louis license collector's office know Tichenor well.

Over the past 2 1/2 years, assessors have lost each of 45 decisions before the state Tax Commission, chiefly because of Tichenor's rulings as a chief hearing officer. The Tax Commission's rulings have given millions of dollars in tax reductions to big businesses and have sent shudders through school districts and other government entities whose budgets depend heavily on local property taxes.

And they have left assessors scrambling to find new ways to value business personal property.

The erosion of revenue from business personal property could shift the tax burden to residential taxpayers, or reduce the amount of money going to schools and other taxing districts.

Tichenor says he and the other two hearing officers he supervises are following the law exactly as he sees it. And his superiors have agreed with him. So far, the three-member Missouri Tax Commission and two state courts have endorsed Tichenor's calls. They have agreed with his findings that the county assessors are using weak evidence to support their valuations.

The assessors see it differently. "If assessors could ask for a different hearing officer, Bart Tichenor would be out of work," said Jefferson County Assessor Randy Holman.

"Tichenor is like the law west of the Pecos," said Stan Piekarski, chief deputy in the St. Louis license collector's office. "He's like Judge Roy Bean, a law unto himself."

The cases involve challenges that companies have made to the assessed values that the assessors and the license collector placed on their business machinery and equipment. And when the commission accepted Tichenor's findings and rejected the counties' assessments, it dramatically devalued millions of dollars worth of machinery, sometimes to pennies on the dollar.

Since Jan. 1, 2001, commission decisions have reduced the assessed valuation of business personal property in the 45 cases to \$50 million from \$137 million. The \$87 million difference amounts to a 64 percent reduction in the combined assessed valuation.

These decisions have generated substantial tax cuts for some companies. Collectively, an \$87 million reduction in assessed valuation would generate a \$5.2 million property tax cut based on a rate of \$6 per \$100 assessed valuation. The Post-Dispatch, one of the companies that won an appeal, cut its St. Louis manufacturers' tax bill for 1999 by 93 percent.

Tichenor said that he always has sided with the taxpayers' attorneys and experts in these kinds of cases because he considered their evidence more persuasive.

"I understand how it looks from their (assessors') perspective," said Tichenor. "But the bottom line is that the evidence on the record in these cases has simply been that the taxpayers have been able to prove up the value that they have advocated. I can't go with the fact that it's going to reduce the tax dollars to the schools. That isn't the basis on which I make a decision.

"I feel confident in every one of the decisions I have issued that I have correctly applied the law and that I have correctly weighed the evidence, and I am going to continue to do that," Tichenor said. "It has nothing to do with bias against assessors and it has nothing to do with the individual attorneys who practice before me."

The decisions have had other consequences:

- \* Some school districts, fearing the loss of local property tax revenue, are helping assessors to finance the defense of their cases before the commission when large sums are at stake. Money that could go for teachers and books is being budgeted for appraisers.

- \* Fearing they will lose future appeals before the commission, assessors are settling some cases with complaining taxpayers rather than spending money to fight the appeals. The settlements reduce the assessed valuations of a company's equipment but perhaps not by as much as if the case went all the way to the commission.

- \* Assessors and school officials have asked the Legislature to change the state's property tax law to stop the trend. An interim legislative committee may take up the issue this fall.

Property taxation varies from state to state. In Illinois, personal property is not taxed. In Kansas, there are schedules built into the law that assessors use to value personal property. The Missouri Tax Commission has proposed eliminating the tax on business personal property except for motor vehicles.

### "Overtaxed businesses"

A taxpayer who disagrees with a local assessor's determination of property values may appeal to the county board of equalization and then to the state Tax Commission. In St. Louis, business machinery is valued by the license collector's office, and local appeals go to the Merchants' and Manufacturers' Tax Equalization Board.

When the appeals go to the state level, Tichenor and the hearing officers he supervises collect evidence in trial-like settings and write decisions. The three-member state Tax Commission, which reviews them, has supported those findings.

State courts have gone along, too. Both the St. Louis Circuit Court and the state Appeals Court affirmed his trend-setting decision that changed how business machinery and equipment should be valued in Missouri. Since then businesses have been winning all the decisions.

Companies that appeal are big enough to have the tools, machinery and equipment, which when appraised, justify the costs of the appeal. While business property of smaller companies might also be overvalued, the costs of appraisal and litigation make their appeals economically unfeasible.

The big companies that do appeal nearly always rely on a single lawyer, Thomas Caradonna of St. Louis, and a tax consulting firm headed by C aradonna's father-in-law, Joseph Sansone, the former St. Louis assessor. The tax consulting company gets a fee that is based on a percentage of the amount of taxes saved. Caradonna and Sansone say the fact that the Tax Commission has lowered values so dramatically shows how out-of-whack the assessors' valuation methods are when it comes to business equipment.

"My experience in hundreds of cases is that business taxpayers are being overtaxed," Caradonna said.

David Glaser, chief financial officer for the Rockwood School District, understands how a business would want to cut expenses, including taxes. But he said the trend that has developed "is not fair."

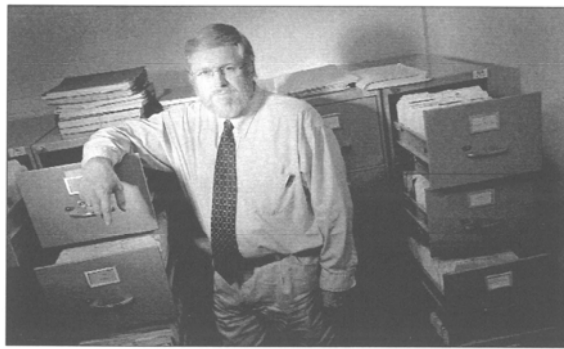
"Some people are taking advantage of the law and some are getting their (tax) bill and paying it," Glaser said. "This precedent being set by the Missouri state Tax Commission is encouraging many other businesses to jump on this gravy train, and the impact to the already-stressed state of Missouri and many school districts could be disastrous."

Two pending cases could reduce personal property valuations more than all 45 cases recently decided. DaimlerChrysler has requested a \$97.5 million assessed valuation reduction to \$140 million from \$237.5 million for its two plants in Fenton. If approved, the devaluations would cost Rockwood approximately \$4.3 million in property tax revenue. To replace that amount, a 14-cent levy increase would have to be applied to the property of all other taxpayers in that district.

Settlement talks are under way between St. Louis County officials and DaimlerChrysler

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W.B. "Bart" Tichenor, chief hearing officer of the state Tax Commission, at his office in Jefferson City. He says many county assessors are using weak evidence to support their valuations.

to try to resolve the appeal without expensive litigation. Glaser said if the county had to pay for an appraisal of the machinery in the two plants, it would cost between \$200,000 and \$400,000.

The Ford Motor Co. is also trying to win a reduction in the value of the machinery in its plant near Kansas City to \$66 million from \$102 million. Officials of the North Kansas City School District say if Ford wins that case, the district will lose \$1.7 million in tax revenue. It would take an 11-cent increase in the residential property tax levy to make up the loss.

Paul Harrell, chief financial officer of the North Kansas City School District, said the School Board has agreed to help the Clay County assessor fight the appeal.

"If these cases are successful, it will ultimately erode the tax base from which we operate," Harrell said.

### Proof of value

The property tax system funds local functions like schools, libraries, fire protection districts, hospitals, sewage systems and road districts. Property is assessed at a percentage of its market value. People pay property taxes based on the value of their homes and automobiles. Companies pay based on the value of commercial real estate and their business equipment, computers, tools and machinery.

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### Bart Tichenor

Name: W.B. "Bart" Tichenor  
Age: 56  
Occupation: Lawyer and Baptist minister.  
Employment: Chief hearing examiner for Missouri Tax Commission; lobbyist for Missouri Baptist Convention, 1985-1992; assistant to former state representative, House speaker and Lt. Gov. Ken Rothman, 1973-1985.  
Residence: Columbia, Mo.  
Family: Wife, Ruth.

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The system raises about \$4 billion a year in local taxes. A reduction in the valuation of property in one area can shift the tax burden to others. Also, for some school districts, the loss of assessed valuation means the districts qualify for more state aid money.

The dispute between the Tax Commission and assessors is based on how business machinery and equipment are valued. For years, assessors had established the market value of a piece of equipment by relying on its purchase price. That price would be adjusted downward each year by a percentage contained in a depreciation schedule.

Missouri law says property values should be based on what a willing buyer and willing seller would exchange for an item. Businesses report to the assessor the purchase price of a piece of equipment and each year thereafter the assessor would adjust the market value of the item downward depending on its age. After six or seven years - the depreciation schedules vary from county to county - the lowest market value of the equipment would be 30 percent of its original purchase price.

The assessor computes the assessed value from the market value figure. For business personal property, the assessed value is one-third of the market value.

This system is called a "mass appraisal." For county assessors, particularly where there are a lot of manufacturing plants, it's the most efficient way of establishing values for hundreds of companies with potentially thousands of pieces of equipment like air compressors and drill presses.

While it may be the most efficient, the state Tax Commission has ruled it's not the most accurate. In recent years, lawyers and consultants for taxpayers have been attacking the "mass appraisal" system as way off base.

"An item could be a hundred years old, and it never depletes in value as far as assessments are concerned because of the schedule that's being used," Sansone said.

Using sales records compiled by Allen Bealmear, an appraiser based in Dallas, Caradonna and Sansone have demonstrated to Tichenor that equipment was selling for less in the marketplace than the depreciated values the assessors were using. Tichenor agreed to use the sales record values - often from auction sales - to determine the values of business equipment for tax purposes.

"Auction prices are representative of willing sellers and knowledgeable buyers," Tichenor said. "Here's what real buyers and sellers are doing out there in the real world."

Assessors argue that auction prices are "fire sale" prices. They say an auction price has no bearing on the actual value of equipment that

is still in use and making money for a company.

"Tichenor says it has value only as scrap or on the auction market," Piekarski said. "In fact, the equipment has a value far greater than that to the plant."

Tichenor has advised assessors to compile their own equipment lists and to complete their own appraisals. But for hundreds of companies and thousands of pieces of equipment, there isn't enough staff in each assessor's office to do that work.

"And big business knows that," said Matt Brown, manager of special assessments and business personal property appeals in St. Charles County.

"Bart Tichenor has told me it's up to me to make my own asset list and not go by what the companies provide," Brown said. "If you've ever been to GM, it's absurd, it's time-consuming, climbing on machinery and looking for serial numbers. The companies give the tax assessors one-third of the answers they give their own consultants. It's so burdensome to the assessors' offices it's unbelievable."

But without more specific proof, Tichenor said, the assessors are going to continue to lose appeals.

"If you have the same evidence each time and the evidence on one side is persuasive, there is not going to be any change," Tichenor said.

### Big tax cuts

The trend to lower business personal property assessments has produced dramatic reductions in the tax bills paid by some businesses.

For example, in January 2001, Tichenor handed down a decision that slashed the assessed value of the machinery and equipment of the Post-Dispatch. The decision reduced the assessed valuation to \$350,200 from the \$4,839,464 computed by the Merchants' and Manufacturers' Tax Equalization Board for the 1999 tax year. According to the license collector's office, the 93 percent reduction in the assessed valuation reduced the Post-Dispatch's manufacturers' tax bill to \$21,176 from \$292,647, a savings of \$271,466. Another decision reduced the Post-Dispatch's manufacturer's assessed valuation to \$353,070 from \$3,523,672, for the 2000 tax year. That reduction was 90 percent.

The city's manufacturer's tax rate in 1999 was \$6.04 per \$100 assessed valuation. About two thirds of the money went for public schools and the rest was distributed to the library, the Zoo-Museum District, the Metropolitan Sewer District and others.

Alan Silverglat, chief financial officer of Pulitzer Inc., publisher of the Post-Dispatch, said the city had overvalued the newspaper's equipment, especially its presses.

"My sense is that the size of the reduction is nothing more than a measure of how far off the original assessment was from a fair value in the first place," Silverglat said. He said to value items like presses from a schedule gave no recognition to the age or condition of the presses.

"A 30 percent residual value would be well in excess of the fair market value in any context," Silverglat said. "It's safe to say that no press is newer than 20 to 25 years old and in some cases much older."

He added that the newspaper does not carry the value of the presses "anywhere near 30 percent of their value for financial statement purposes."

Silverglat wouldn't say what percentage of the tax savings was paid to the Sansone tax consulting firm, other than describing it as a "typical arrangement." Sansone would not disclose the fee percentage either "for proprietary reasons." School officials and assessors believe Sansone's fee is either one-third or one-half of the taxes saved for each year in which the taxes are reduced.

State Sen. Chuck Gross, R-St. Charles, sponsored a bill in the Legislature last session to prohibit contingent fees in tax appeal cases. It went nowhere. School officials and assessors pushed for passage of another bill that would require the use of a uniform depreciation schedule in the valuation of business equipment across the state.

The depreciation factors would be similar to what a business uses when filing statements with the IRS. The floor of the useful seven-year life of a piece of equipment would be 25 percent of its value under the proposed schedule. Business groups opposed the bill, which did not pass. However, a special interim legislative committee may convene this fall to look at the issue.

### Not too taxing

Big businesses have been successful in reducing their tax bills by fighting the assessments made on the county level. Companies have won decreases ranging from 23 percent for Ambassador Envelope, to 93 percent for the Post-Dispatch.

COMPANY	ASSESSED VALUES		TAX YEAR	DIFFERENCE	PERCENT DECREASE
	COUNTY TAX ASSESSOR	STATE TAX COMMISSION			
<b>ST. CHARLES COUNTY</b>					
Pohlman, Inc.	\$2,520,805	\$875,213	2000	\$1,645,592	65%
Pohlman, Inc.	2,552,098	1,196,630	2001	1,355,468	53%
Leonard's Metal Inc. II	1,038,520	457,463	2000	581,057	56%
Leonard's Metal, Inc.	1,083,497	520,390	2001	563,107	52%
Ambassador Envelope Co.	1,195,427	752,565	2000	442,862	37%
Leonard's Metal Inc.	942,060	503,504	2000	438,556	47%
Leonard's Metal, Inc. II	935,831	511,300	2001	424,531	45%
Ambassador Envelope Co.	1,000,696	769,990	2001	230,706	23%
<b>ST. LOUIS COUNTY</b>					
Nestle USA, Inc.	\$2,381,350	\$1,061,943	2000	\$1,319,407	55%
Nestle USA, Inc.	1,790,230	486,934	2000	1,303,296	73%
Pohlman, Inc.	2,071,310	802,625	2000	1,268,685	61%
Nestle USA, Inc.	1,129,400	363,952	2000	765,448	68%
<b>ST. LOUIS CITY</b>					
Warner-Jenkinson	\$9,097,811	\$1,670,335	1999	\$7,427,476	82%
Warner-Jenkinson	7,795,857	1,675,740	2000	6,120,117	79%
Nordyne, Inc.	6,708,629	2,138,300	2000	4,570,329	68%
Post-Dispatch	4,839,464	350,200	1999	4,489,264	93%
Alumax Foils, Inc.	6,062,310	1,779,500	2000	4,282,810	71%
Alumax Foils, Inc.	5,704,607	1,761,612	1999	3,942,995	69%
Nordyne, Inc.	5,866,387	1,970,300	1999	3,896,087	66%
The Dial Corporation	5,242,508	2,009,540	2000	3,232,968	62%
Post Dispatch	3,523,672	353,070	2000	3,170,602	90%
P.D. George	2,117,081	738,490	2000	1,378,591	65%
Nestle USA, Inc.	2,546,729	1,271,050	2000	1,275,679	50%
P.D. George	1,840,315	741,815	1999	1,098,500	60%
Lincoln Industrial	2,248,286	1,150,820	2000	1,097,466	49%
CPI Properties LLC	1,372,592	304,480	2000	1,068,112	78%
Lincoln Industrial	2,145,205	1,117,497	1999	1,027,708	48%
Sunline Brands	2,034,910	1,192,922	1999	841,988	41%
Precoat Metals	2,468,918	1,703,960	2000	764,958	31%
Bachman Machine	2,344,683	1,763,600	2000	581,083	25%
Boxes, Inc.	1,506,601	1,037,317	1999	469,284	31%
Boxes, Inc.	1,257,505	806,530	2000	450,975	36%
<b>BALLS COUNTY</b>					
Wallow Industries	\$1,185,930	\$657,719	2000	\$528,211	45%
<b>PIKE COUNTY</b>					
Holcim Cement Co.	\$7,853,170	\$3,124,113	1999	\$4,729,057	60%
<b>PERRY COUNTY</b>					
T.G. Missouri	\$21,703,580	\$6,593,735	2000	\$15,109,845	70%
Solar Press Inc.	1,142,160	498,372	2000	643,788	56%
<b>JEFFERSON COUNTY</b>					
USA Vacuum	\$713,630	\$105,570	2001	\$608,060	85%
Western Wire Prod.	1,245,700	704,670	2001	541,030	43%
USA Vacuum	522,900	151,012	2000	371,888	71%
<b>FRANKLIN COUNTY</b>					
Von Weise Gear	\$2,952,073	\$1,788,876	2000	\$1,163,197	39%
Rexam Containers	1,368,805	701,051	2000	667,754	49%
St. Clair Die Casting Co.	1,617,563	1,017,994	2000	599,569	37%
Bull Moose Tube Co.	718,140	276,570	2000	441,570	61%
Lowell Manufacturing Co.	915,609	644,480	2000	271,129	30%
Bull Moose Tube Co.	262,731	102,295	2000	160,436	61%
<b>TOTAL</b>	<b>\$137,567,285</b>	<b>\$50,206,044</b>		<b>\$87,361,241</b>	<b>64%</b>

Source: Missouri State Tax Commission

Private meetings are being planned to try to reach a compromise. Ray Mc Carthy, a lobbyist for the state Chamber of Commerce and Industry, said there may be room for a new system that allows for the use of a depreciation schedule when specific appraisals are unavailable.

"Our organization would want to look carefully to make sure it wasn't raising taxes," McCarty said. "I wouldn't want to rush into anything there."

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