



# RSK&G BRIEFS



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PROPERTY TAX APPEALS, TAX EXEMPTIONS  
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## STEVEN KANDELMAN JOINS RSK&G



Rieff Schramm Kanter & Guttman is very pleased to announce that attorney Steven Kandelman has joined our firm. For over nineteen years, Steve has been obtaining favorable property assessments and tax reductions and refunds for his clients by challenging fair market valuations and securing real estate tax incentives. He has represented commercial, industrial and residential property owners in assessment appeals at the Cook County Assessor, the Cook County Board of Review, the Illinois Property Tax Appeal Board and in the Circuit Court of Cook County. Steven also practices in the offices of Assessors and Boards of Review throughout Illinois.

Steven Kandelman is a past Chairman of the Real Estate Tax Committee of the Chicago Bar Association (2012) and the Real Estate Tax Assessment

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## THE STATUS OF ILLINOIS AND CHICAGO PENSION REFORM

Illinois residents, and particularly Chicago residents, are painfully aware that both the State of Illinois and the City of Chicago are facing financial and fiscal crises resulting from under-funded pension plans. The cause of the under-capitalization of these government pension funds is not attributable to overly generous pension plans for state and municipal employees. Government employees have been making ample and continuous contributions to their retirement plans throughout their years of employment. Rather, these pension plans are currently underfunded because past office holders irresponsibly failed to adequately make the governments' contributions to, or in effect borrowed funds from, these retirement plans to pay other government liabilities. This protracted practice was carried out over many

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Nothing like summer in the city!!



I'm proud to pay taxes in the United States; the only thing is, I could be just as proud for half the money.  
--Arthur Godfrey

## STEVEN KANDELMAN JOINS RSK&G

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Subcommittee (2010). He has also been a highly regarded speaker at the Continuing Legal Education seminars of the Chicago Bar Association on the subject of Real Estate Taxation. Steve is a current member of the Illinois State Bar Association (ISBA) State and Local Taxation Committee and has authored articles for the ISBA Tax Trends newsletter.

Mr. Kandelman received his Bachelor of Arts degree from Northwestern University and his Juris Doctorate from the Chicago-Kent College of Law. □

## THE STATUS OF ILLINOIS AND CHICAGO PENSION REFORM

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years without any adequate mechanisms for re-capitalizing these retirement funds.

The backdrop regarding the State of Illinois pension funds crisis is that, in 2013, then-Governor Pat Quinn signed into law Illinois bill SB 1 which was intended to responsibly reform the method for re-capitalizing the five pension funds of the State of Illinois. However, because this law had an ultimate effect of partially reducing the benefits received by retired employees of the State, in May, 2015, the Illinois Supreme Court, by a unanimous decision, upheld a ruling by the Sangamon County Circuit Court that struck down the State's 2013 pension reform law. The Circuit Court had ruled that the 2013 pension reform law resulted in a reduction of benefits to the funds' beneficiaries, and that such a reduction in benefits violated the "pension protection clause" of the Illinois Constitution which states that public pension benefits "shall not be diminished or impaired."

In 2014, Mayor Rahm Emanuel negotiated a deal with 27 of the 31 unions for the city of Chicago's employees. These workers are covered under only two of city's six funds, the Municipal Employees' Fund, and the Laborers' Fund.

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Under the 2014 pension reform deal that was negotiated, there were: 1) an increase to the employees' contributions to the pension funds by 27% over four years (from 8.5% to 11% of employees' salaries), 2) freezes to the retiree cost of living adjustment benefits in certain years, 3) a lowered retirement age for certain workers from age 67 to age 65, 4) guarantees of pension funding by allowing pension systems to garnish state grants, 5) an extension of the pension funds' debt repayment schedules (amortization) by 15 years, and 6) increases to the City's contributions to the pension funds under a ramped-up schedule to \$530 million by the year 2025.

On Oct. 28, 2015, the Chicago City Council passed the 2016 budget which increased Chicago property taxes by \$543 million, to be phased in over four years. This was a 73% increase in the City's tax levy; which amounts to an approximate 12% increase in an overall tax bill, however after these increases, the City of Chicago's tax levy will be roughly commensurate with the suburban municipal levies. These increased taxes are for funding the Police and Fire pension plans only.

In November, 2015, the appeal of a ruling in the Circuit Court of Cook County by Judge Rita Novak was heard before the Illinois Supreme Court. As in the State of Illinois pension funds case, the Circuit Court had ruled that the City's 2014 pension reform deal regarding the Chicago Employees and Laborers funds resulted in a reduction in benefits to the funds' beneficiaries, and that such a reduction in benefits violated the "pension protection clause" of the Illinois Constitution which states that public pension benefits "shall not be diminished or impaired."

The City argued before the Supreme Court that the City's plan is different from the State's pension reform law because, under Chicago's negotiated plan, the workers will benefit because the plan increases the City's contributions under a ramped-up schedule.

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## THE STATUS OF ILLINOIS AND CHICAGO PENSION REFORM

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The unions that were not privy to the agreement with the City, on the other hand, argued that simply meeting the constitutionally-protected requirements of the pension funds' existing plans does not confer any new benefit to the plans' beneficiaries. On March 24, 2016, the Illinois Supreme Court affirmed the ruling of the Circuit Court. There is currently no resolution in sight for the shortfall in the City's pension plans.

A possible prospective remedy to these State of Illinois and City of Chicago pension crises may be to move all government employees into 401(k)-style plans, rather than pensions. This would prevent future office holders from accessing these retirement funds.

Regarding the Chicago Teachers' Union, possible consideration may be given to accessing funds in Tax Increment Financing Districts for funding Teachers' pensions. The City of Chicago may have an option to declare Chapter 9 bankruptcy, as did the City of Detroit in 2013, but this option would not be available to the State of Illinois. Both the State of Illinois and the City of Chicago have received repeated down-grades in their credit ratings. □

### THE SUSTAINABLE EMERGENCY RELIEF ("SER") PROGRAM

Two of the goals of the Cook County Board of Commissioners are to foster new business within the County and to increase the County's employment opportunities. In an effort to encourage new development, as well as substantial rehabilitation and re-occupation of existing properties, the County Board has been establishing certain property tax incentive programs within Cook County. These programs have traditionally utilized the County's Real Property Assessment Classification Ordinance by providing

lower levels of assessment for qualified properties for specific periods of time. For the past four decades, in order to qualify for these incentives, the property owner has been required to undertake new construction or substantial rehabilitation of an existing commercial or industrial property, or else re-occupy a long-abandoned commercial or industrial property.

Now, in recognition of the rising real estate tax burden on industry in Cook County, the current sluggish economy and the need to maintain existing jobs, the County Board of Commissioners has further amended the Classification Ordinance to allow real estate tax relief to additional industrial enterprises that meet special circumstances to also qualify for the benefits under the Class 6(B) incentive program.

This recent amendment has created the Sustainable Emergency Relief (SER) Program that allows a municipality in which an industrial property is located (or the County Board for unincorporated areas of Cook County) to pass a resolution, which must be subsequently verified by the County Board, as a determination that special circumstances exist that qualify the property for Class 6(B) incentive treatment.

In order for a property to qualify for SER, the following criteria must be met:

1. The industrial enterprise must have occupied the premises for a minimum of ten years prior to the date of the SER application;
2. The industrial applicant must submit evidence of hardship supporting a determination that participation in the SER Program is necessary for the industrial enterprise to continue operation at its current location, and maintain its staff, and that without such designation the industrial enterprise would not be economically viable, thereby causing the property to be in imminent risk of becoming vacant and unused;
3. The applicant must not already be receiving any other Cook County property tax incentive for the same property.

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## THE SUSTAINABLE EMERGENCY RELIEF ("SER") PROGRAM

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Evidence is rather simple to establish two of the required elements: the ten years of occupancy by the industrial enterprise, and the lack of any other property tax incentive being applied to the property. The extent of the occupancy can be demonstrated by ordinary business records or utility bills throughout the term. Proof that there is no other property tax incentive being applied to the property can be shown by copies of the property's assessment records obtainable from the assessor's office. However, a more involved undertaking is the establishment of evidence proving a hardship which supports a determination that the SER Program is necessary to continue operations at the location and maintain staff, and that without the program, the enterprise is not economically viable, causing imminent threat to the continued occupancy of the property.

The Cook County Assessor's Class 6(B) SER Program Eligibility Application requires the applicant to submit a financial analysis, including recent income tax returns. The analysis must, on the one hand, demonstrate a continuous decline in business, threatening the continuation of the enterprise and, on the other hand, demonstrate that the benefits derived from the Class 6(B) incentive will provide viability to the enterprise. Although the conclusions are subjective in nature, the evidence must provide

as strong an objective basis as possible to establish that the incentive classification is necessary for continuation of the operation of the enterprise at the site.

Once a qualifying ordinance or resolution is adopted by the local municipality, validation of the findings in the ordinance or resolution must also be adopted by the Cook County Board of Commissioners and approved by the Cook County Assessor. Only then will the property receive a 10%, rather than a 25%, level of assessment for 12 years. The term of the incentive is contingent upon the industrial enterprise remaining in operation at the property throughout the 12-year term and, unlike some other incentives, the SER Program is not renewable at the conclusion of the 12-year term.

Our clients with industrial properties are encouraged to contact us to discuss an evaluation as to whether the viability of their industrial enterprise may qualify their property for incentive classification under the SER Program. □

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