

Mr. Howard C. Beck, Jr., City Auditor (continued)

The court held that such error vitiates the assessment and an injunction would effectually restrain the collection of any tax levied thereon.

In the case of Monticello v. Baltimore City, supra, the Court of Appeals of Maryland held that:

"Notice and an opportunity to be heard are essential to the validity of every assessment. * * * It is a rule founded on the first principles of natural justice, older than written constitutions, that a citizen shall not be deprived of his life, liberty or property without an opportunity to be heard in defense of his rights, and the constitutional provision that no person shall be deprived of these without due process of law has its foundation in this rule."

In the case of Baltimore City v. Poole and Son Co., supra, the Court of Appeals said:

"The remedy against an invalid assessment, one made without jurisdiction to make it, is to strike it out, although the result be to lose the taxes for the year; the remedy against an assessment, valid as an assessment, but illegal because of the manner in which it was made, or erroneous because of under or over valuation, is by application to Appeal Tax Court recognizing the jurisdiction to assess but attacking the legality or regularity of the form of proceedings, resulting from the conceded jurisdiction."
(Emphasis supplied)

The case of Wasena Housing Corp. v. Levay, 188 Md. 383, referred to in your request for an opinion, is not binding on the factual situation presented in this case, since in the Wasena case the notice of assessment sent to the property owner was valid and not defective, due to the fact that the property owner had agreed to the assessment with the Supervisor of Assessments. The Court of Appeals held that since the property owner had actual notice of the assessment and agreed to the figures therein contained, he waived the required statutory ten days notice and the assessment was valid.

Since the assessment made in this particular case was invalid because the property owner was not afforded proper legal notice, the assessment could not become final and, therefore, the property owner is entitled to a refund under the above provisions