Taxing Authority "Spot" Appeals – Where Maximizing Tax Revenue and Uniformity Conflict

Client Advisories

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Within the last few years, many taxpayers have experienced a growing trend of taxing authority initiated "spot" appeals seeking increases in property taxes. If you have been targeted for a spot appeal in recent years, you are not alone.

Real estate markets are dynamic, and valuations are always changing. In many jurisdictions, however, real estate assessments are static and can remain unchanged for decades. Over time, some assessments no longer reflect the same level of assessment to fair market value as other property in the taxing jurisdiction. Taxing authorities argue, in part, that their appeals help ensure that certain taxpayers are paying their proportionate share of the tax burden. Many of these same taxing authorities, however, target sub-classifications of property for non-uniform and disparate treatment in taxation.

In order to maximize revenue, some taxing authorities employ the practice of selectively appealing the assessments of sub-classes of property types (e.g., commercial, industrial or recent sales), while choosing not to appeal the assessments of other property types (e.g., single-family residential or property that has not recently sold). The incentive for taxing authorities to concentrate solely on highly-assessed commercial and industrial properties is obvious. Such properties are assessed at substantially higher values than other smaller commercial, industrial and single-family residential property types, and hence, raising the targeted assessments would result in greater tax revenue. Taxing authorities are also motivated to avoid residential appeals for political reasons. Unlike commercial and industrial properties, most residential homes are owned by residents who vote in local elections, and it would be politically unpopular to appeal their assessments.

Many jurisdictions permit spot appeals. Even if a taxing authority has the statutory right to initiate spot appeals, such appeals are subject to equal protection and uniformity mandates of federal and state constitutions. *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923); *Allegheny Pittsburgh Coal Co. v. County Commission of Webster*

County, West Virginia, 488 U.S. 336 (1989); e.g., *Downingtown Area School District v. Chester County Board of Assessment Appeals*, 913 A.2d 194, 205 (Pa. 2006) (citations omitted).

The Equal Protection Clause of the United States Constitution protects taxpayers from discrimination in assessment and taxation. In 1818, Illinois adopted the first uniformity clause stating: "That the mode of levying a tax shall be by valuation so that every person shall pay a tax in proportion to the value of the property that he or she has in his or her possession." Illinois Constitution, 1818, Art. 8, Sec. 20. Some state constitutions provide even more taxpayer protection. In a recent landmark decision, the Pennsylvania Supreme Court held in *Valley Forge Towers* that the practice of selectively targeting a sub-class of properties for appeal violates the Uniformity Clause of the Pennsylvania Constitution. *Valley Forge Towers Apts. N. LP v. Upper Merion Area Sch. Dist. et al.*, 163 A.3d 962 (Pa. 2017). The Court found that when there is a conflict between maximizing revenue and ensuring that the taxing system is implemented in a non-discriminatory way, the Uniformity Clause requires that the latter goal be given primacy. *Id.* at 980.

Taxing authority "spot" appeals can significantly impact your property taxes. Taxpayers should take the necessary steps to protect their rights to uniformity in assessment, and equality and fairness in taxation.

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