

Selective property tax appeals based on property type or residency status of the owner violates the Pennsylvania Constitution's Uniformity Clause

Articles July 12, 2017

The Pennsylvania Supreme Court recently reversed the Commonwealth Court and held that the Uniformity Clause of the Pennsylvania Constitution does not permit school districts to selectively appeal only the assessments of commercial properties, such as apartment complexes, while choosing not to appeal assessments of other types of property, such as single-family residential homes. *Valley Forge Towers Apartments N, LP v. Upper Merion Area Sch. Dist.*, No. 49 MAP 2016, 2017 WL 2859007 (Pa. July 5, 2017).

In this case, the Upper Merion Area School District contracted with Keystone Realty ("Keystone") to identify and recommend property assessments that the District should appeal. Valley Forge Towers Apartments N, LP ("Valley Forge") alleged that Keystone targeted commercial properties, including apartment buildings, but did not target residential properties for appeal. Valley Forge alleged that this policy violated the Pennsylvania Constitution's Uniformity Clause because it targeted a property type and/or the residency status of the property owner.

The Court acknowledged that school districts had the right to pursue administrative tax appeals pursuant to statutory assessment laws. See, e.g., 53 Pa.C.S. § 8855 (Consolidated County Assessment Law). However, the Court explained that assessment appeals authorized by statute must still comply with the Pennsylvania Constitution, including the Uniformity Clause. That clause states: "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws." Pa.Const. art. VIII, § 1.

Under the Uniformity Clause, all property in a taxing district is a single class and is entitled to uniform treatment. *Clifton v. Allegheny County*, 969 A.2d 1197, 1212 (Pa. 2009). But the *Valley Forge* Court found that the lower courts erred in concluding different treatment of certain property sub-classifications for appeal purposes was permissible if there was a rational basis for such treatment. While it was without dispute that appeal policies could not be based on clearly wrongful conduct (e.g., racial discrimination), the Court explained that the prohibition against disparate treatment of any class or sub-class of property applies to any intentional or systematic enforcement of the tax laws.

Accordingly, the Court explained that school districts and other taxing authorities may not implement a systematic program of only appealing the assessments of one sub-classification of properties, when that sub-classification is drawn according to the residency status of the property owner or the property type. In other words, one cannot constitutionally have a program based, for example, just on commercial properties, just on apartment complexes or just on single-family residential homes.

Though this is an important decision that could have widespread impacts on pending and future tax appeals, it should not be interpreted as invalidating all assessment appeal policies by school districts. The Court explained that a particular appeal policy employed by a school district lies within its discretion, but courts will enforce the constitutional boundaries of any such policy. In this case, the Court held that the Upper Merion School District's policy of allegedly targeting properties based on the type and/or the residency status of their owners transgressed those boundaries.

The Court did explain that other approaches could withstand scrutiny. Specifically, the Court implied that policies setting forth minimum thresholds for appeals, such as In re Springfield Sch. Dist., 101 A.3d 835, 840 (Pa. Commw. Ct. 2014), could withstand challenge.

Valley Forge is an important decision as it sets some guidelines on what tax appeal policies a public body may employ. School districts should discuss this decision with their solicitors and review their policies of appealing property assessments to confirm that they comply with this decision.

For additional information, contact John Vogel or Chris Voltz.