



KASSAB ARCHBOLD & O'BRIEN

JOSEPH PATRICK O'BRIEN + + + + + * #####
JOHN YANOSHAK + + + + +
CHRISTOPHER H. PEIFER + + + **

PA R.E. TAX APPEALS, LLC
PA ESTATE AND BUSINESS LAWYERS
PA PROPERTY TAX CONSULTANTS

* L.L.M. TAXATION
** ALSO MEMBER NJ BAR
*** FORMER I.R.S. ESTATE TAX ATTORNEY
**** MEMBER CA AND DC BARS ONLY
+ PA INST. CPA'S; INST. PROP. TAX
++ DEL. CO. ATTY CPA FORUM
+++ DEL.CO ESTATE PLANNING COUNCIL
++++ MEMBER, SUBURBAN WEST, PA, NTL. ASSN. OF REALTORS
***** PA STATE CERTIFIED BROKER-APPRASIER
M. S. TAXATION
M. A. PSYCHOLOGY
MEMBER-NATIONAL ASSOCIATION OF PROPERTY TAX ATTORNEYS (NAPTA)

OF COUNSEL
FREDERICK W. KREPPEL ***
GLENN L. MADERE * ****

PARALEGALS
DONNA LEE WILLIS+++
PATRICIA BEVERS
BONNIE M. BOLC+++++ +++++ ####
MARY E. KEARNS O'BRIEN ##

PAST PRESIDENTS
DELAWARE COUNTY BAR ASSOCIATION
WILLIAM CORNELL ARCHBOLD, JR.
1928-2013
JOHN J. MAFFEI
1927-2016

FORMER PA HOUSE SPEAKER
MATTHEW. J. RYAN
1932-2003

KEARNS, ARCHOLD & MAFFEI -
KASSAB, ARCHBOLD & O'BRIEN LLC
1954-2017

**UPCOMING COUNTYWIDE REASSESSMENT
EFFECTIVE TAX YEAR 2021
DELAWARE COUNTY, PENNSYLVANIA**

**BY: JOSEPH PATRICK O'BRIEN, ESQUIRE
CHRISTOPHER PEIFER, ESQUIRE**

THE FOLLOWING IS A GENERAL OVERVIEW. IT DOES NOT CONSTITUTE AND MAY NOT BE RELIED UPON AS LEGAL ADVICE. EVERY MATTER IS FACT SPECIFIC. SEE AN ATTORNEY LICENSED TO PRACTICE LAW IN PENNSYLVANIA

Delaware County, Pennsylvania is in the process of a Countywide revision of real estate tax assessments, reassessing each of the approximately 200,000 real estate tax parcels in the entire County. This reassessment is the result of a 2017 decision of Honorable Charles Burr, the Senior Judge of the Court of Common Pleas of Delaware County, ordering the reassessment of all Delaware County real properties to take effect in the year 2021. As determined by the Court, the assessments throughout the County, and its various municipalities and school districts, violated the requirement of “uniformity” as mandated by the Pennsylvania and United States Constitutions.

Probably beginning in March 2020 and over the next seven to eight weeks it is expected that the Delaware County Board of Assessment Appeals (the “Board”) and its reassessment agent, Tyler Technologies Inc. (“Tyler”), an independent company, will be mailing initial “informal” notices advising you that the County intends to increase your property’s current real estate tax assessment from its present assessment which for 2019 is supposed to be

MEDIA OFFICE
17 E. Front Street, Media, PA 19063
Phone (610) 565-3800

KASSAB, ARCHBOLD & O'BRIEN LLC

~ KAO LAW ASSOCIATES ~

58.1% of fair market value to a new assessment for 2021 set at 100% of the fair market value in 2019 (the “Base Year”) as determined by Tyler. Such a change in assessment becomes effective January 1, 2021 for the County and township/borough, and July 1, 2021 for the school districts.

**Applicable 2017 Common Level Ratios Applied to 2019
To Delaware County and Neighboring Counties**

County	CLR	Equivalent	PDR	Decimal Base Year
Bucks	10.4%	0.104	100%	1972
Chester*	51.3%	0.513	100%	1996
Delaware	58.1%	0.583	100%	1998
Montgomery*	50.9%	0.509	100%	1996
Philadelphia**	98.7%	0.987	100%	2014 ?

*Chester and Montgomery Counties underwent a similar countywide reassessment in 1997 that took effect in the 1998 tax year using 1996 as their base year. They are permitted to use the PDR in the year of the revaluation.

**Philadelphia County has legal uncertainty since arguably it is 100% of its 2014 base year but the City now asserts that it is based upon current market value and has recently revalued many properties for 2020.

Figure 1

The City of Chester, Delaware County, a Third Class City, is permitted to have its own separate tax assessment system on a “Triennial” basis, which sets the City assessment for a three year period ”Triennial”) rather than one year at a time. The City uses a different ratio of assessment, presently 25%. As of April 30, 2019, it is unknown whether Chester will adopt the County system for the 2021 tax or will continue with a triennial for 2021, 2022 and 2023. In prior years, the City’s appeal date for the triennial assessment was September 1 of the year preceding the Triennial. For example, the deadline to appeal the 2018-2019-2020 Triennial assessment was September 1, 2017. Chester taxpayers, however, should confirm the actual filing deadline with the City. Most independent legal observers believe that the City should eliminate its triennial system and use the County annual system as all other municipalities in the County must do. Some believe that the present use of the triennial system by Chester may be illegal. Properties in the City of Chester are taxed on the City’s assessment by the City at its millage rate and the Chester Upland School District uses the City assessment for properties in the City while the County taxes them on the County’s assessment.

To gauge the actual change in your assessment for the 2021 tax year, you must convert the present 2019 assessment to a 2019 implied market value. For each County in Pennsylvania, the Pennsylvania Tax Equalization Division (“TED”) through its State Tax Equalization Board (“STEB”) establishes a ratio of assessed value to market value in each County known as the Common Level Ratio (the “CLR”). The CLR varies from year to year

MEDIA OFFICE

17 E. Front Street, Media, PA 19063

Phone (610) 565-3800

Web: <http://www.kaolawassociates.com>

firm fax (610) 892-6888

email: josephobrien@kaolawassociates.com

KASSAB, ARCHBOLD & O'BRIEN LLC
~ KAO LAW ASSOCIATES ~

based upon a statistical analysis of real estate sales in each county.¹ In order to obtain the actual value implied by the 2019 assessment, divide the assessment indicated on your 2019 real estate tax bill by the decimal equivalent of the CLR shown in *Figure 1*. Compare the resulting value to the year 2021 assessment proposed by the County and CLT when made in March 2020. As you can see from the example in *Figure 2*, this process allows you to quickly evaluate the true effect of the change in assessment.

How do real estate assessments work?

Prior to 2011, real estate tax assessment law in Pennsylvania was divided into General County Assessment Law, 72 P.S. § 5020-101, et seq., and Consolidated County Assessment Law.² Both types of assessment law were applicable in all cases as long as the provisions of each did not conflict. When conflicts between the general law and specific class county codes arose, the specific class county code controlled.³

<u>EXAMPLE</u>	
DELAWARE COUNTY	
2019 Assessment	\$400,000
+ CLR (Decimal Equivalent)	÷ 0.581
Implied Market Value	\$688,468

Figure 2

Effective January 1, 2011 the Pennsylvania assessment law was substantially modified so that the Consolidated County Assessment Law (“CCAL”) of 53 Purdons §8801 et seq. essentially eliminated the truncated treatment of different counties existing prior thereto so that this statute, CCAL, now applies to all second class A through eighth class counties in Pennsylvania. The provisions of the general assessment law at 72 P.S. §5020-101, et seq. as well as specific provisions for First Class Counties (“Philadelphia County”) and Second Class Counties (“Allegheny County”) only apply to them and the CCAL does not apply to Philadelphia or Allegheny but only to all of the other counties.

¹ 72 P.S. § 4656.16a. As a practical matter, STEB does not use current transactions to formulate the CLR. For example , the ratio of actual 2017 sale prices of real estate to actual 2017 assessments in each County were submitted to STEB during 2017 and are compiled and then published in June 2018 for application during the 2019 tax year. The Delaware County Board of Assessment Appeals used the ___ CLR for appeals of the 2019 real estate tax assessments, all of which need to be filed on August 1, 2018. The CCAL at 53 P.S. § 8801 et seq. continued to use the CLR of the various Counties in the same manner.

² Counties of the First Class (Philadelphia), 72 P.S. § 5341.1, et seq.; Counties of the Second Class A (Delaware County) and Third Class, 72 P.S. § 5342, et seq.; Counties of the Second Class (Allegheny County), 72 P.S. § 5452.1, et seq.; and Counties of the Fourth to Eighth Classes, 72 P.S. § 5453.101,et seq.

³ McKinney v. Board of Commissioners of Allegheny County, 35 Pa. Commw. 91, 385 A.2d 596 (1978); Truck Terminal Motels of America v. Berks County Board of Assessment Appeals, 127 Pa. Commw. 408, 561 A.2d 1305 (1989).

KASSAB, ARCHBOLD & O'BRIEN LLC

~ KAO LAW ASSOCIATES ~

The tax assessment is the dollar amount upon which each taxing district (County, Township/Borough, School) applies its own tax rate, usually expressed in terms of mills, to arrive at a real estate tax bill. In Second Class A and Third Class Counties (such as Bucks, Chester, Delaware and Montgomery), a three (3)-person Board of Assessment Appeals, appointed by the Commissioners,⁴ hears all appeals of real estate tax assessments.⁵ One might argue that these Boards are quasi-judicial bodies, rather than mere guardians of the tax rolls. But attitudes, as well as the formality, local rules and actual procedures of each Board, vary significantly from county to county. In Fourth to Eighth Class Counties the County Commissioners may appoint a three-person board or may sit as a Board of Revision of Taxes.

In Delaware County, a Second Class A County, an assessment cannot be changed unless: 1) there is an improvement to or subdivision of the property (e.g. addition, swimming pool);⁶ 2) the owner or taxing district (township or school) appeals the assessment;⁷ or 3) there is a county wide reassessment.⁸ It is illegal for the county to change an assessment just because the property sold for more than its assessment of if just certain properties are selected for appeal.⁹

⁴ 72 P.S. § 5342. Different rules apply depending on the specific class of county. In Counties of the First Class (Philadelphia County), the Judges of the Court of Common Pleas, by majority vote, elect the members of the Board of Revision of Taxes to six (6) year terms. 72 P.S. § 5341.2. In Counties of the Second Class (Allegheny County), the county commissioners appoint seven (7) members to constitute the Board of Property Assessment, Appeals and Review. 72 P.S. § 5452.2. In Counties of the Second Class A and Third Class a Board of Assessment Appeals is appointed by the County Commissioners (or equivalent Home Rule body) while in Counties of the Fourth to Eighth Classes the Board of Commissioners may sit as the Board of Revision or it may appoint a three member board. 53 Pa. C.S. § 8851 (a).

⁵ 72 P.S. § 5342 (b), permits the creation by the Counties of First Class or Second Class of up to four (4) temporary auxiliary Boards in the year of a countywide revision of assessments. [Check this as to Philadelphia and Allegheny] ?? As a result of the 2011 CCAL at 53 Pa. C.S. § 8853 (a), there is no limit on the creation of temporary auxiliary Appeal Boards to years of countywide re-assessment.

⁶ 72 P.S. § 5347.1 as to First Class and Second Class Counties and as to Second Class A through Eighth Class Counties the CCAL at 53 P.S. § 8817 (a) would apply.

⁷ 72 P.S. § 5020-520 as to First and Second Class Counties. The CCAL at 53 Pa. C.S. 8855 likewise permits taxing districts of Second A through Eighth Class Counties to appeal. But see Valley Forge Towers ____ ____ ____.

⁸ 72 P.S. § 5349. Counties of the First Class (Philadelphia), however, may reassess certain properties without undertaking a reassessment of all of the tax parcels within the county. 72 P.S. § 5020-402. Query if this passes PA constitutional muster.

⁹ A property's recent selling price is merely evidence of the fair market value. It is not controlling. 72 P.S. § 5349 as to First Class and Second Class Counties. 53 Pa. C.S. § 8842 (b) (1) (i) essentially provides the same thing for Second Class A through Eighth Class Counties. It is unconstitutional for a taxing district to engage in the reassessment of recently sold properties at a fair market value resulting in higher tax assessments. Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia, 488 U.S. 336, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989). See also the recent Pennsylvania Supreme Court Decision Valley Forge Towers LP [Get the correct citation. 2017 or 18]

MEDIA OFFICE

17 E. Front Street, Media, PA 19063

Phone (610) 565-3800

Web: <http://www.kaolawassociates.com>

firm fax (610) 892-6888

email: josephobrien@kaolawassociates.com

KASSAB, ARCHBOLD & O'BRIEN LLC

~ KAO LAW ASSOCIATES ~

Normally, the respective tax rate for each municipality is expressed in “mills”.¹⁰ The taxing authorities formulate their own tax rates, or millages, based upon their individual budgetary requirements. Due to the limitation on events that may trigger a reassessment of a particular property by the County Board of Assessment and a general political aversion to reassessing all county properties, real estate tax assessments, even those established by a countywide revaluation, tend to remain unchanged for long period of time, even twenty to fifty years¹¹. As a general rule, property values increase over time. If the assessment remains constant, the ratio of assessed value to market, commonly known as the CLR, must decrease to account for the inflationary effect. Thus, the lower the Common Level Ratio, the higher the tax millage. *Figure 3* illustrates the difference in millages for properties with a Fair Market Value of \$1,000,000.00 in 2019 located in Montgomery in Montgomery County, Chester and Delaware County.

EXAMPLE
All Properties \$1,000,000 Fair Market Value

	Lower Merion Twp	Haverford Twp	West Chester Borough
County	Montgomery	Delaware	Chester
PDR	100% (1996 Base Year)	100% (1998 Base Year)	100 % (1996 Base Year)
CLR	50.9% (2019)	51.1% (2019)	51.30%
Correct Assessment	\$509,000	\$581,000	\$513,000
Presumed Value @CLR	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00
County Mills (2019)	3.459	5.46100	4.369
Community College	0.39	-	-
Township Mills (2019)	4.19	8.36100	6.9
School District Mills (7.1.18)	28.7477	31.79910	21.2723
Total Mills	36.7867	45.62110	32.5413
Total Taxes	\$18,724.43	\$26,505.86	\$ 16,693.69
ETR*	1.87244303	2.65058591	1.66936869

*Effective Tax Rate (ETR) = Total Taxes/Market Value

Figure 3

¹⁰ Ten (10) mills = one percent (1%); 950 mills = ninety five percent (95%).

¹¹ Bucks County, Pennsylvania has a CLR of 10.4% for 2019 perhaps reflecting the fact that the last reassessment in Bucks County was in 1972. Chester and Montgomery County which both use a 1996 base year had reassessments to 100% effective in 1998 and the CLR's in Chester (51.3%) and Montgomery (50.9%) for 2019 reflect the same thing.

MEDIA OFFICE

17 E. Front Street, Media, PA 19063

Phone (610) 565-3800

Web: <http://www.kaolawassociates.com>

firm fax (610) 892-6888

email: josephobrien@kaolawassociates.com

KASSAB, ARCHBOLD & O'BRIEN LLC

~ KAO LAW ASSOCIATES ~

What is a countywide reassessment in Pennsylvania?

Normally, it is illegal in Pennsylvania for a Board of Assessment Appeals in Second Class A through Eighth Class Counties, including Delaware (2A), Montgomery (2A), Chester (3), Bucks (2A), Lancaster (3) and York (3) Counties, to change assessment absent a physical change to the property, including improvements, new structures and subdivisions of the property as previously mentioned. Any “aggrieved” party, however, including the property owner and the municipality or school district taxing districts, may appeal a specific assessment.¹² The exception is if the county reassesses **all** properties on a countywide basis. The reassessment of certain neighborhoods, townships or school districts on less than a countywide basis is known as “spot assessment”. Such a practice is violative of the Pennsylvania and United States Constitutions.¹³

What is the impact of a countywide reassessment?

As set forth above, your assessment prior to the 2021 proposed reassessment year was supposedly at the ratio to fair market value determined by the STEB. Since the taxing districts are limited in their ability to contest assessments, it was not unusual to find that many properties are actually underassessed. In our experience, it is not the typical real estate owner who advises the County that the real estate taxes are too low. Thus, property owners with low assessments, which generally tend to be the smaller, older residential properties in areas where values were rising, maintained the benefit of lower taxes. Owners of commercial and industrial properties, or properties with new construction or substantial changes faced a different situation. Such assessments, after applying the appropriate common level ratio, are traditionally equal to or in excess of the fair market value. With the coming reassessment, **every** property is supposed to be assessed at 100% of its fair market value. Unfortunately, the fact that a property was underassessed, and receiving the benefit of lower taxes, is no defense to a potential increase for the 2021 reassessment tax year.

One can assume that the review and assessment of nearly 200,000 parcels is a daunting task. Delaware County engaged Tyler, a company specializing in mass appraisals, to undertake this process. Since both Chester

¹² CCAL at 55 Pa. C.S. § 8844 (c)(1) permits appeals to the Board by “any person aggrieved by an assessment...” or “any taxing district having an interest in the assessment...” grants taxing authorities in the Second Class A and Third Class Counties the right to appeal assessments in the same manner as the property owner. One may argue, however, that a taxing authority’s use of the appeal mechanism to accomplish a revaluation of assessment within the district runs afoul of the constitutional and statutory prohibitions against spot reassessment. See Valley Forge Towers L.P. _____.

¹³ Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia, 488 W.S. 336 109S. Ct. 633, 102L. Ed. 2d 688 (1989). In 1976, the Pennsylvania Legislature passed a statute prohibiting “spot assessments” in all counties, except for Counties of the First Class (Philadelphia County). 72 P.S. § 5020-402(a). See note 9, supra. CCAL at Title 53 Pa. C.S. § 8843 prohibits any Board of Assessment Appeals from engaging in the practice of spot assessment which is defined in Title 53 Pa. C.S. § 8802.

MEDIA OFFICE

17 E. Front Street, Media, PA 19063

Phone (610) 565-3800

Web: <http://www.kaolawassociates.com>

firm fax (610) 892-6888

email: josephobrien@kaolawassociates.com

KASSAB, ARCHBOLD & O'BRIEN LLC

~ KAO LAW ASSOCIATES ~

and Montgomery Counties engaged Tyler's predecessor, Cole Lyer Trumble ("CLT"), for their past reassessments in the 1998 tax year and Tyler was involved in the recent Lancaster County reassessment, the (year ?) Lehigh County reassessment, as well as performing the reassessment for Delaware County in the year 2000, we believe that our representation of numerous property owners in all of those Counties provides valuable insight as to the legal and practical issues that might arise. One can anticipate that the reassessment and appeal process in Delaware County will be similar. It is our experience that a number of glaring discrepancies in value can be expected. Considering the number of properties, Tyler generally does a fine job for the Boards of Assessment Appeals, which must ultimately supervise the entire process. In the case of major commercial, industrial and investment properties, however, unique factors are present that lend to great difficulty when done in a "mass appraisal" system such as that used by Tyler.

Obviously, when real estate owners receive an assessment that is perhaps lower than anticipated, rarely do they complain to Tyler or the Board. We have seen a tendency, however, to slightly, if not substantially, under assess residential properties in a countywide reassessment. At the same time, commercial properties, which often represent a substantial part of the assessment base but with very little voice or vote, end up with assessments that could substantially differ (higher or lower, but usually higher) from the fair market value.

Will tax rates remain the same if the assessments are raised?

Since the County will increase the 2021 assessments from a 2019 ratio of 58.1% [applicable 2019 Delco CLR] to 100% of [2019?] fair market value, the municipalities must lower their tax rates, expressed as "mills" on the tax bill. As a result of the new "tax base" arising from the new 100% assessment figures for 2021, each taxing district must establish a millage that will produce revenue from those taxes no greater than 110% of what was raised by the taxing district in the preceding tax year.¹⁴ The amount of the increase could be higher only if the taxing district obtains Court approval. Thus, as a general rule, a taxing district may only increase its real estate tax revenues by ten percent (10%) after completion of the reassessment.

While this limitation on a 10% increase in total tax dollars in a taxing district is mandated by State law,¹⁵ **this does not mean that a particular property in a taxing district can't have its taxes raised by more than 10 percent.** The owner of a tax parcel pays a proportionate share of the taxes collected based upon the percentage of

¹⁴ Citation

¹⁵ 53 Pa. C.S. § 8823

MEDIA OFFICE

17 E. Front Street, Media, PA 19063

Phone (610) 565-3800

Web: <http://www.kaolawassociates.com>

firm fax (610) 892-6888

email: josephobrien@kaolawassociates.com

KASSAB, ARCHBOLD & O'BRIEN LLC
~ KAO LAW ASSOCIATES ~

the total assessed value of all parcels within the taxing district. All things being equal even if your year 2021 assessment at 100% of full (?) 2019 fair market value (“Base Year”) stays the same over the value presumed by your 2019 assessment, divided by 58.1% [2019 CLR], while the 100% assessed value of other properties within the taxing district fall, you could pay a much higher percentage of the total taxes. Therefore, while the taxing district’s real estate tax revenues may only increase by ten percent (10%), the effect on a case-by-case basis may vary greatly. Obviously, if your 2021 assessment of 100% of 2019 value is greater than the 2019 presumed value and other properties in the taxing district are valued at less than the 2019 presumed value, your property’s share of taxes could be higher regardless of the 10% cap.

What is the process Delaware County is going to follow in its Countywide reassessment?

Delaware County engaged Tyler to make a “mass appraisal” of every tax parcel within the County. It is expected that by February 2020 Tyler’s representatives will have either inspected the property or provided the taxpayer with written correspondence indicating Tyler’s preliminary findings regarding the property. It is expected that by March 2020, Tyler will provide owners with a recommendation of a fair market value and therefore the real estate assessment at 100% of fair market value of each parcel. Tyler will probably use the same procedure as it has in other Pennsylvania counties. Tyler’s informal notices will advise the owner of the availability of an informal meeting or phone contact with a Tyler representative to disagree or seek a correction of the proposed amount. **THE TYLER NOTICE WILL PROBABLY NOT ADVISE YOU OF THE 2019 ASSESSMENT, THE IMPLIED VALUE (ASSESSMENT DIVIDED BY 2019 CLR) OR THE FACT THAT THERE IS STILL A FORMAL APPEAL PROCESS TO THE BOARD.** It is expected that telephone banks will also accept questions.

Typically, the informal meeting with Tyler, which usually must be scheduled within fifteen (15) days of the date of the informal notice, are of very short duration with a clerk who is working with a computerized compendium of literally thousands of properties. Past experience is that except in various instances where there are glaring errors including a miscalculation of the building area or ground area, use, number of apartments, miscalculation of the property, or recent sale, there does not seem to be a significant change at the Tyler informal meeting level, even if you were to present Tyler with an appraisal or corrected square footage or plans. (We would expect the County and Tyler would disagree.) Certainly environmental clean-up costs, business value and use, long term fair market rent issues are not very successful at the informal meeting.

After the Tyler informal meeting, the Delaware County Board of Assessment will issue the formal written notice of the year 2021 assessment at 100% of 2019 (?) fair market value.¹⁶ In order to appeal the assessment, the

¹⁶ 53 Pa. C.S. § 8848 (a)

KASSAB, ARCHBOLD & O'BRIEN LLC
~ KAO LAW ASSOCIATES ~

property owner must file a written appeal to the Board of Assessment Appeals within forty (40) days from the date of the County's notice.¹⁷

According to State law, such counties, including Delaware County, involved in a countywide reassessment process **must** send this written notice of change to all taxpayers on or before July 1 of the year preceding the year the reassessment is to take effect.¹⁸ The formal notice will advise the property owner of the final real estate tax assessment for the 2021 tax year. The year 2021 assessment will represent 100% of the property's fair market value as of January 1, 2019 if 2019 is chosen as the Base Year.¹⁹ Therefore, the Delaware County Board of Assessment **must** give you formal notice of its proposed assessment on or before July 1, 2020, for the new assessment to be effective in the year 2021.²⁰

It is expected that Delaware County will follow the procedures by Tyler used in other counties, with the formal notices of assessment to be issued in a number of "waves" spread over several weeks ending by July 1, 2020. Thus, it is expected that there will be no fixed deadline to appeal for all properties in Delaware County but rather since the appeal date for each property will be forty (40) days from the formal notice, it will be important to view the new assessment upon receipt of the document or its date which triggers the forty (40) day appeal date. If you have two or more properties, it is possible that the appeal dates could be different. **Please be advised that if you don't file an appeal to the Board of Assessment Appeals on or before the appropriate deadline, you are precluded from appealing the year 2021 reassessment.**²¹

It is **very important** that taxpayers understand that even though Delaware County established August 1 of the year preceding the tax year as the filing deadline for annual tax assessment appeals,²² this law does not apply to reassessment years. The only formal county notice you will receive, and the only final appeal date that you will have during this year, will be forty (40) days following the date of the notice of your proposed reassessment for the year 2021.²³

¹⁷ 53 Pa. C.S. § 8848 (c)

¹⁸ 53 Pa. C.S. 8848 (a). 53 Pa. C.S. § 8848 (b) requires that informal reviews be completed no later than June 1 of the year preceding the year of countywide reassessment.

¹⁹ The 2019 base year value is known as the "base year value". 53 Pa. C.S. § 8802 Definitions

²⁰ Id.

²¹ You could, of course, appeal the 2020 tax year on or before August 1, 2019 or the 2022 tax year on or before August 1, 2021.

²² 53 Pa. C.S. § 8844 (c)

KASSAB, ARCHBOLD & O'BRIEN LLC
~ KAO LAW ASSOCIATES ~

What must be done to protect my legal rights concerning the tax assessment appeal to the Board?

Even though all properties in the County are being “reassessed” or appraised at 100% of their alleged fair market value, presumably using 2019 as the base year, the Board must still adhere to the Consolidated County Assessment Law of Pennsylvania relating to the determination of the subject property’s actual value. One must determine fair market value by taking into account the cost, income, and comparative sales methods of valuation.²⁴ The impact of environmental contamination,²⁵ and the effect of long-term contract rent²⁶ are matters relevant to the determination of fair market value. Furthermore, one must segregate items of non-taxable personal property, such as business value, goodwill, franchise value, brand name and equipment, from the taxable real estate.²⁷

The law also mandates that the taxpayer must not only file a written appeal within the prescribed time limits, but according to statute, the appeal must contain the assessment sought to be appealed and the address to which the Board must mail written notice of the hearing.²⁸ All appeals must be heard by the Board no later than October 31.²⁹ Most counties, including Delaware County, issue their own form of tax assessment appeal and specific rules of practice before the Board. While it is best to use the County form and follow their procedures, often a Board will demand more than what the statute requires.

How do I appeal the Board’s decision to Court?

Once the Board issues its decision, the taxpayer or any taxing district, if dissatisfied, **must** file a petition to appeal with the Court of Common Pleas of the county, in this case Delaware County, within thirty (30) days from the date of the Board’s decision. There is a \$302 filing fee that the party filing the appeal must pay to the Office of Judicial Support. The petition for appeal to the Court of Common Pleas is a court document that must be in conformity with state and local rules of court.

²³ [Need to check if there is an equivalent of 72 P.S. § 5349 (g)(2.1) in the CCAL . The 72 recites the basis for nunc pro tunc.

²⁴ 53 Pa. C.S. 8842 (b)(1)(iii)(A)

²⁵ Monroe County Board of Assessment Appeals v. Miller, 570 A2d 1386 (Pa. Commw. 1990)

²⁶ Appeal of Marple Springfield Center, Inc., 530 Pa. 122, 607 A2d 708 (1992). See also Tech One Associates v. Board of Property Assessment, Appeals & Review 53 A3d 685 (Pa. 2012) as to lease hold improvements.

²⁷ F&M Schaeffer Brewing Co. v. Lehigh County Board of Assessment. 530 Pa. 451,610 A2d1 (1992)

²⁸ 53 Pa. C.S. §8841 (c). If the taxpayer is represented by an attorney, that person should be named to receive the notice since the owner may receive the notice and fail to give it to the attorney for appeal to Court.

²⁹ 53 Pa. C. S. § 8841 (e). Per 53 Pa. C.S. § 8841 (e)(2.1) the Board must give written of its decision by November 15th.

MEDIA OFFICE

17 E. Front Street, Media, PA 19063

Phone (610) 565-3800

Web: <http://www.kaolawassociates.com>

firm fax (610) 892-6888

email: josephobrien@kaolawassociates.com

KASSAB, ARCHBOLD & O'BRIEN LLC
~ KAO LAW ASSOCIATES ~

What happens during an appeal to the Court of Common Pleas?

Delaware County has a very effective system for arbitration of the vast majority of real estate tax assessment appeals filed with the Court of Common Pleas. Arbitration (by three (3) Delaware County attorneys picked from volunteer panels) applies to all tax appeal cases in which the amount in controversy, defined as “the difference between the assessment amount claimed by the opposing parties multiplied by the Common Level Ratio,”³⁰ is less than \$50,000.00. In reality the rule is applied to mean the difference in taxes between the taxpayer’s appraised fair market value multiplied by the Common Level Ratio, multiplied by the total County, Municipality and School District millages vs. the same formula applied to the taxing district’s appraisal. If more than \$50,000.00 in taxes is involved, or there is a complex legal issue, or an exemption, the matter is directly assigned to a Judge for trial. If a matter is arbitrated, there is an automatic right to appeal the arbitrator’s decision to a Judge, albeit with an additional filing fee. The case is heard “de novo”. Few cases are appealed from arbitration since most are either settled close to the date of arbitration or the parties to the appeal recognize the wisdom of the arbitration panel.

The assessment issued by the Board and contested in the Court of Common Pleas is considered rebuttably correct. Once the petitioner, however, presents competent, credible evidence of value of the property, the County’s assessment is no longer presumed to be correct. The burden then shifts to opposing party to rebut the evidence offered by the appellant.³¹

Once the matter is appealed to court, it is to be heard by the arbitrators, and/or the Court if appealed to the Court of Common Pleas from arbitration or directly to Court, on a “de novo” basis. Essentially, the Board’s decision is not binding upon the Court (whether by arbitration or non-jury trial). During a non-jury trial or arbitration, the judge or three arbitrators receive as new evidence, the appraisal(s) from the parties to the appeal. Based upon the quality of the evidence presented, the trier of fact determines the property’s value. Keep in mind that the decision of the County Board of Assessment Appeals, whether no change, increase or decrease, DOES go into effect for the appealed year until any appeal to Court changes it.

At trial, each party offers evidence of value usually in the form of expert testimony by a real estate appraiser. From these two expert opinions, the Judge must make a decision on the evidence presented taking into account the three methods of valuation.

³⁰ See attached Rule *30 Civil Court Rules Delaware County Court of Common Pleas.

³¹ Deitch Company v. Board of Property Assessment, 417 Pa. 213, 209 A.2d 397 (1965).

KASSAB, ARCHBOLD & O'BRIEN LLC
~ KAO LAW ASSOCIATES ~

What if I am not satisfied with the decision of the Court of Common Pleas?

If either party disagrees with the Judge's decision, the aggrieved party may appeal to the Commonwealth Court of Pennsylvania.³² If that appeal is unsuccessful, either party may request the permission of the Supreme Court to appeal the Commonwealth Court's decision (called a petition for allocator or petition for allowance of appeal which is rarely granted.)

Can or should the property owner handle the appeal to the Board without an attorney licensed to practice law in Pennsylvania?

Rule 3(d) of the Delaware County Board of Assessment Appeals specifically states:

“(d) Representation at Hearing. Appellants or their attorneys must (emphasis added) attend the hearing.

Only those attorneys licensed to practice law in the Commonwealth of Pennsylvania shall be permitted to represent parties before the Board of Assessment Appeals. A corporation may be represented by a duly authorized corporate officer.”

While a taxpayer may personally attend and argue the taxpayer's own case, the Rule does not permit the taxpayer to be “represented” by another person who is not an attorney, even if that person is an appraiser, tax consultant, CPA or Accountant, or other non-attorney. A Commonwealth Court case upheld regulations issued by Westmoreland County, similar to those in Delaware County, prohibiting non-attorneys from representing property owners before the Board.³³ The fact that a non-lawyer holds a “power of attorney” still does not authorize such conduct.³⁴ In Pennsylvania it is a Criminal Offense to engage in the unauthorized practice of law.³⁵ The very practical side to this is that if a property owner (other than on small to medium residential properties) attends a Board hearing without legal representation or even if an owner of commercial/industrial property attends without a lawyer but with a tax consultant, Board members often feel that they can make little or no adjustment because a “consultant” may not even have explained to the owner the option of an appeal to the Court of Common Please since non-attorneys also may not represent others in a court of law.

³² The Commonwealth Court will sustain the decision of the trial court in tax assessment appeals unless the trial court abused its discretion or committed an error of law. RAS Development Corporation v. Fayette County Board of Assessment Appeals, 704 A.2d 1130 (Pa. Commw. 1997).

³³ Westmoreland County v. Rodgers, 693 A.2d 996 (Pa. Commw. 1997) petition for allowance denied, ___ Pa. ___, ___ A.2d ___ (1998).

³⁴ 42 Pa. C.S. § 2524.

³⁵ Kohlman v. Western Pa. Hospital, 438 Pa. Super. 352, 652 A.2d 849 (1994) petition for allowance of appeal denied, 541 Pa. 640, 663 A.2d 692 (1995).

MEDIA OFFICE

17 E. Front Street, Media, PA 19063

Phone (610) 565-3800

Web: <http://www.kaolawassociates.com>

firm fax (610) 892-6888

email: josephobrien@kaolawassociates.com

KASSAB, ARCHBOLD & O'BRIEN LLC

~ KAO LAW ASSOCIATES ~

Much like sending soldiers into combat with “blanks”, attending a Board hearing without a lawyer tells the Board you are less likely to appeal to Court (or even know you should) so that the owner may not get the relief to which the owner is entitled.

Respectfully submitted,

**JOSEPH PATRICK O'BRIEN, ESQUIRE
CHRISTOPHER H. PEIFER**

KAO Law Associates
17 East Front Street
P.O. Box 626
Media, PA 19063
Telephone: (610) 565-3800
Fax: (610) 892-6888
[www.kaolawassociates.com](http://www kaolawassociates com)
josephobrien@kaolawassociates.com
chrispeifer@kaolawassociates.com

MEDIA OFFICE

17 E. Front Street, Media, PA 19063

Phone (610) 565-3800

Web: <http://www.kaolawassociates.com>

firm fax (610) 892-6888

email: josephobrien@kaolawassociates.com

Rule *30 - Appeals from Real Estate Assessment

- (a) Except as may otherwise be herein provided, the procedure on appeals from real estate assessment shall be governed by the provisions of Rule* 206.l(a).

Comment: Subsection (a) amended January 28, 2016, effective upon publication in the UJS Portal.

- (b) All such appeals shall be by petition which shall be filed with the Office of Judicial Support to be time-stamped and assigned a number. A separate petition shall be filed for each separately assessed property.
- (c) The petitioner shall file with the petition a certification that service in conformity with Pa.R.C.P. 440 has been made upon the Board of Assessment Appeal of Delaware County and all taxing districts or property owners affected by the appeal. A copy of this certification shall also be filed with the Court Administrator.
- (d) Respondent shall have twenty (20) days within which to answer the petition or enter an appearance. The entry of an appearance shall be deemed to constitute an answer denying the substantive averments in the petition challenging the propriety of the assessment. Failure to answer or appear within the prescribed time may result in a forfeiture of the right to oppose the appeal.

- (e) The 206.l(a)(c)(i) notice shall in a separate paragraph state the amount petitioner contends to be the fair market value of the property.

Comment: Subsection (e) amended January 28, 2016 effective upon publication in the UJS Portal.

- (f) Where the amount in controversy is not in excess of Fifty Thousand Dollars (\$50,000.00), the appeal shall be arbitrated in accordance with the provisions of Rule *130l(f) and an arbitration date will be assigned at the call of the tax assessment appeal list. Amount in controversy shall be deemed to be the difference between the assessment amount claimed by the opposing parties multiplied by the applicable common level ratio. All other appeals will receive judicial assignment at the call of the tax assessment appeal list and shall thereafter be processed pursuant to Rule *206. l(a)(2).

Comment: Subsection (f) amended January 23, 1998. Amended January 28, 2016 effective upon publication on the UJS Portal

- (g) In appeals involving income-producing property the appellant must provide to all parties, within sixty (60) days from the date the appeal was filed, the following information:

- (1) Income and expense statements for three (3) years immediately prior to the year in which the appeal was filed.
- (2) A complete and current rent roll, to include a list of all tenants and their annual rent, the term of each lease (including any extension or renewal options), any special provisions and a sample lease.

- (h) All parties shall exchange appraisal reports within one hundred twenty (120) days from the date the appeal was filed.

- (i) Petitioner's failure to comply with sections (e), (g) or (h), in the absence of good cause, will result in the dismissal of the appeal. Respondent's failure to comply with paragraph (h), in the absence of good cause, will result in the grant of appropriate summary relief to appellant.

- J) The caption of any such appeal shall include, in addition to that which is otherwise required, the names and addresses of all record owners, the address of the property in question, the municipal subdivision wherein the property is located, and the tax folio number or numbers.

Comment: Adopted March 29, 1990, effective April 30, 1990. Amended July 22, 1992, April 26, 1994 and February 7, 1995 Subsection (f) amended January 23, 1998.