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PENNSYLVANIA REAL ESTATE TAX ASSESSMENT LAW
2018 TAX APPEAL FAQ'S
COUNTY, SCHOOL AND MUNICIPALITY
PRACTICE AND PROCEDURE
2018 TAX APPEALS
TO BE FILED IN 2017

“ANATOMY OF A PA. R.E. TAX APPEAL”

2018 PENNSYLVANIA REAL ESTATE TAX APPEALS
FAQS (Frequently Asked Questions)

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**“ANATOMY OF A PA. R.E. TAX APPEAL”
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HOW ARE REAL ESTATE TAXES CALCULATED?

Real estate owners in Pennsylvania typically pay real estate taxes to the county, municipality (township, borough or city) and school district (“taxing districts”) in which the property is located based upon the dollar assessment of that property set by the County, multiplied times its tax millage (rate) for a separate tax in each taxing district.

Since “millage” [10 “mills” equals one percent (1%)] or really the tax rate is set each year by each taxing district, the taxes imposed upon a particular parcel of real property are the total of all of the tax millages imposed by the various taxing districts multiplied by the assessment of the property. For example, a warehouse in Yeadon Borough, Delaware County assessed at \$1,000,000 in 2013, where the 2013 County millage is 5.4520, Borough millage is 9.8900 on July 1, 2013-14 William Penn School District millage is 41.0600, or a total of 56.4020 mills is equal to 5.6402% or \$56,402 per \$1,000,000 of assessment. By contrast, the same \$1 million of assessment in 2013 would pay \$27,319.90 for a property in Marple Township, Delaware County (total 27.3199 Mills) and \$50,236.90 in Sharon Hill (total 50.236.90 Mills) and \$40,072 in Springfield (total 40.0720 Mills). Taxes in other PA counties and other municipalities are determined in the same manner.¹ And as you will learn the \$1,000,000 in assessment in Delaware County in 2016 is deemed to be 67.8% of fair market value or \$1,474,926 however and for 2017, a CLR of 65% or \$1,538,462, in 2014 the CLR was 74% giving a presumed fair market value of \$1,351,35. (Technically CLR the STEB issued in 2016 CLR is based upon 2015 sales and is used as the 2017 CLR for Tax Appeals)

WHAT IS AN APPLICABLE REAL ESTATE TAX YEAR?

County and Municipality (city/borough/township) taxes are imposed on a calendar year basis, with the school districts being on a July 1 to June 30 fiscal year. This differs somewhat in Philadelphia and Allegheny Counties as do some of the other general rules in this overview. In Third Class Cities, there are separate assessment systems often covering more than one tax year, differing tax rates on land and buildings (e.g. Allentown, Lehigh County) and/or different appeal dates. (e.g. September 1, 2017 for Triennial for 2018-2019-2020 in Chester City, Delaware County)

HOW ARE REAL ESTATE TAX RATES SET BY THE TAXING DISTRICTS?

Each taxing district generally sets its tax rate for each ensuing tax year’s projected budget needs late in the preceding year, e.g., the County and Municipalities usually vote in December 2016 to set their 2017 budget to set their Calendar Year 2017 tax rate in mills. The school rate is set for a July 1 to June 30 fiscal tax year although the calendar year in which the school tax year begins is the assessment year, e.g. the school district uses the “2017” assessment for the July 1, 2017 – June 30, 2018 fiscal tax year. (Except Philadelphia)

¹ Examples: Berks, Bucks, Dauphin, and Chester

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IS THE ASSESSMENT THE VALUE OF MY PROPERTY?

Your assessment may (rarely) be the actual current market value of your property, or it may represent, depending upon your County, only a percentage of the value (the County Predetermined Ratio (PDR) or the Common Level Ratio (CLR). As more fully explained below, a Delaware County property assessed at \$1,000,000.00 in 2016 was presumed by the County to be worth 100% of its 1998 Base Year Value **or** \$1,000,000 effective in 2000 when Delaware County last implemented a Countywide Reassessment while Chester and Montgomery Counties have 1996 Base Years for their revaluation effective January 1, 1998 (The assessment divided by the 65% CLR of 2017 – published by TED (formerly known as STEB) in July 2016 and applied to 2017 – value is \$1,538,461 the same as this sum times 65% or \$1,000,000). While the Delaware County 2017 ratio is 65%, 2018 is not yet available.

WHAT IS THE COMMON LEVEL RATIO (CLR) AND WHAT TAX YEAR DOES IT APPLY TO?

The Common Level Ratio is a mathematical (“arithmetic mean”) averaging of arms length sales of real properties in a County in a particular calendar year compared to their actual assessments using “statistically acceptable techniques”, which is computed by the Pennsylvania Tax Equalization Division (TED) formerly known as the State Tax Equalization Board (STEB) each year for each County in the State. As real estate values (and sales prices) rise, the ratio of assessment, CLR, tends to fall. As prices fall, the CLR rises. The Common Level Ratio for a particular year, say, 2004, was the average of sales to assessments in 2002, which was published by STEB on June 30, 2003, and was utilized for the 2004 tax year. The Delaware County 2002 indicated data or 87.2% ratio (to be applied to the 2004 Tax Year), so the Predetermined Ratio of 100% was applied to the assessment in 2004 under the law prior to the Downingtown case. (discussed below) The data indicated a ratio for Delaware County in 2003 of 79.5% so the rate to be applied to appeals for the 2005 was the 79.5% CLR because it had fallen below the 85% rule (15% change from the Predetermined Ratio). The 2004 data was 72.5% ratio that applied for the 2006 Tax Year and the 2005 Delaware County data resulted in a 64.7% and was applied to appeals of the 2007 tax year. The 2006 data indicated a ratio of 61.1% was applied to 2008 and so on. A comparison of some County TED/STEB ¹ CLR's is as follows:

<u>TAX YEAR</u>	<u>Berks</u>	<u>Bucks</u>	<u>Chester</u>	<u>Delaware</u>	<u>Dauphin</u>	<u>Lancaster</u>²	<u>Lehigh</u>	<u>Montgomery</u>	<u>York</u>
2008 (2006 data)	68.10%	9.10%	51.80%	61.10%	71.30%	76.6%	27.9%	50.70%	76.10%
2009 (2007 data)	65.70%	9.40%	51.70%	58.30%	68.50%	73.6 %	27.0%	50.80%	76.00%
2010 (2008 data)	67.70%	9.70%	53.00%	61.30%	70.50%	73.9 %	28.6%	54.00%	78.50%

¹ As a result of Act 2 of 2013 the STEB became part of the Department of Community and Economic Development (DCED) and is referred to as the Tax Equalization Division (TED) within the DCED.

² Lancaster is scheduled to have a Countywide Reassessment occur in 2017 effective for the 2018 Tax Year using January 1, 2015 as the Base Year valuation date.

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2011 (2009 data)	70.10%	10.90%	55.40%	64.20%	70.60%	75.2%	32.2%	56.10%	79.90%
2012 (2010 data)	73.20%	11.30%	56.00%	73.50%	67.50%	76.5%	35.7%	58.00%	83.70%
2013 (2011 data)	77.90%	10.80%	59.00%	72.00%	72.60%	78.8%	35.60%	62.00%	86.50%
2014 (2012 data)	78.10%	11.00%	60.20%	74.00%	76.30%	80.6%	100.00%	63.40%	89.20%
2015 (2013 data)	76.30%	10.80%	57.70%	67.80%	74.20%	79.1%	102.60%	57.5%	88.00%
2016 (2014 data)	75.60%	11.30%	55.40%	67.80%	74.50%	77.5%	100.40%	56.20%	89.30%
2017 (2015 data)	74.3%	11.1%	53.8%	65.0%	73.2%	75.5%	99.0%	56.1%	88.0%
2018 (2016 data)	NYP	NYP	NYP	NYP	NYP	NYP	NYP	NYP	NYP
Base Year	1992	1972	1996	1998	2001	2005(2)	2013	1996	2006
Reval Year	1994	1972	1998	2000	2001	2005	2013	1998	2006

HOW DOES THE “TED” SET THE “CLR”? (New Name)

The Pennsylvania Tax Equalization Division (TED) is supposed to annually review all sales and related data actually occurring in a particular calendar year in each County (say 2016), and by June of the following year, e.g., June of 2017, it publishes what it determines mathematically (with appropriate adjustments) to be the Common Level Ratio (a type of average) of assessments to sales in each County for a particular year, say 2016. These ratios are then applied to the tax year following the June publication, e.g. published in June of 2017 for the 2018 tax year in the example above.

COMMON LEVEL RATIOS VS. ESTABLISHED PREDETERMINED RATIOS

Owners of real estate in eastern, central and southeastern Pennsylvania, Bucks County, Berks County, Chester County, Delaware County, Lancaster County, Lehigh County, Montgomery County and Northampton County, Pennsylvania should be particularly careful with regard to their real estate tax assessments and the **August 1, 2017** filing date (Aug. 15, 2017 for Berks County) for the 2018 assessment appeals. (Philadelphia – October 2, 2017) (for 2018)

For example, in 1998, Delaware County assembled real estate information and valuations from 1998 sales (the “Base Year”) to put into place a countywide real estate reassessment starting in tax year 2000. Thus, beginning 2000, the assessments on properties in Delaware County were supposed to be 100% (the “Established Predetermined Ratio” or “PDR”) of the value of the property, or equal to the value in 1998 (“the 1998 Base Year”). Montgomery and Chester County have a PDR of 100% of the 1996 Base year; Berks County has a 100% PDR of the 1994 Base year, Philadelphia is 100% for 2014. Bucks County - with a 2017 CLR of 11.1% - has not had a reassessment since 1972!

Prior to a December 2006 decision of the Pennsylvania Supreme Court in Downingtown Area School District v. Chester County Board of Assessment Appeals and Lionville Station S.C. Associates, 913 A.2d 194 (2006), the law in Pennsylvania was that a county could use an “Established Predetermined Ratio” (i.e. a percentage of the Base Year Value against the current fair market value) until such time as the Common Level Ratio (CLR) of assessments to values

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then published by STEB for the second year before the appealed tax year, e.g. 2004 for 2006, or 2005 for 2007, varied by more than 15% from the ratio used by the County. In Delaware County, a 100% Predetermined Ratio (of the 1998 Base Year Value) was chosen but 75%, 50% or 25% of Base Year is used in some other Counties in PA depending on Class and is not unusual. This would mean that until the CLR for Delaware County dropped below 85% or rose above 115% of the 100% ratio, the 100% PDR had to be used by Delaware County even when the CLR was e.g. 87.2% for the 2004 tax year. Downingtown stands for the proposition among other things a taxpayer is no longer bound to the 100% PDR in years where there is less than a 15% variance between the CLR and the PDR. Therefore, if the CLR is 88% and the PDR is 100%, the 88% would apply even though less than 15% from 100%. Unfortunately, some recent Commonwealth Court decisions suggest that the holding was limited to Downingtown. The Pennsylvania Supreme Court in Downingtown, held this 15% variable to be unconstitutional in 2006. Note that the PA Legislature, in the recodification and consolidation of PA's tax assessment law: Act 93 of 2010, referred to as Consolidated County Assessment law, (effective January 1, 2011) left this provision in the new statute.

Unfortunately, the application of **Downingtown** has not been easy with the Commonwealth Court dragging its feet all the way!

WHAT WILL THE CLR BE FOR 2018 APPEALS?

Preliminary information and analysis of 2016 sales indicates that the ratio of assessments to sales in e.g. Delaware, Chester, and Montgomery Counties in 2016, which will be published (with all other County CLR's) on or about June 30, 2017, and applicable to the 2018 tax year, will remain close to the present CLR and will stay close to the 2015 CLR's (used for 2017 appeals) because the drastic drop in real estate values has leveled out since 2008 and in some instances, started back up. But as sales prices continue to rise it results in slowly decreasing CLR's. Data may reveal 2016 as the year when the market levels out or to slightly increasing prices forces the CLR's back down slightly. But a lower CLR suggests a higher presumed fair market value when divided into the assessment.

IS THE CLR UNIFORM FOR AN ENTIRE COUNTY?

Since the Common Level Ratio is an average of sales of properties throughout a County, and since the actual experience has been that in newer growing communities in one part of a County there are usually significant increases in value, whereas in the other, older and often urban, industrial and commercial areas, there has been little or no appreciation, the ratio can have a significant effect. Since the CLR is not weighted by TED/STEB for value, location, or use, but simply by transaction, an average of even 65% in e.g. Delaware County could mean that in reality, properties in the more prosperous parts of the County are actually selling in the 35-50% range, while properties in the other, more distressed or industrial part of the County are at 90-100% or above, because there are more of the smaller, high ratio transactions. So far, the Commonwealth Court, notwithstanding the

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Downingtown decision that you should be assessed the same as “similar properties in the neighborhood”, has not been too receptive to this argument.

HOW DOES THE CLR AFFECT MY PROPERTY?

To put it very simply, if you own e.g., an industrial facility in one of the eastern communities of e.g., Delaware County, that is currently assessed at \$10,000,000 and for example, it actually has a level fair market value in August 2000-2003 of \$10,000,000, you could not have obtained an assessment reduction in the 2004 tax year because 100% (the PDR) of \$10,000,000 would have still been \$10,000,000 (See contra, Downingtown which is probably only prospective). Had you appealed the 2014 assessment by 8/1/13, however, when the final applicable Common Level Ratio for 2014 was 74%, you could reduce your assessment by \$2,600,000 ($\$10,000,000 \times 74\% = \$7,400,000$) and reduce your real estate taxes accordingly. In a community where total county, municipal, and school millages are say, 35 mills, or 3.5%, a \$2,600,000 assessment reduction could save you \$91,000 per year, or more, if millage rates were higher.

HOW DOES THE CLR INFLATE THE TAXABLE VALUE OF MY PROPERTY?

Put another way, if your Delaware County property is currently assessed and worth say \$10,000,000 in 2014, a 74% CLR (remember it is the 2012 CLR applied to 2014) means that the presumed fair market value is \$13,513,515. ($\$10,000,000 \div .74$), which is \$3,513,513 more than the \$10 million fair market value (assuming a credible and competent appraisal). This property should be assessed in 2014 at \$7,400,000 or \$2,600,000 lower than the property's \$10,000,000 assessment, and if the total tax rate for County, Municipality and School District were 35 mills (or 3.5%), the tax savings would be \$91,000 ($\$2,600,000 \times 35$ mills).

Conversely, a property in the western part of the County that has an assessment of say, \$5,800,000 with a presumed value in 2014 of ($\$5,800,000 \div 74\% = \$7,837,838$) may be worth \$10,000,000 and therefore would not have appealed its 2014 assessment because it would be asking the County to raise its assessment to \$7,400,000 (assuming a 74% 2014 CLR). A Taxpayer has no legal obligation of appeal an “underassessment”.

WHEN SHOULD I REVIEW MY ASSESSMENTS?

Since the appeal time is short, and since the official Common Level Ratio to be issued in 2017 for 2018 appeals (from 2016 data) will not actually be published until the end of June 2017¹, it is incumbent upon commercial, industrial, and investment property owners to take the time to look at their assessments, give a realistic determination of current fair market value (or get some indication from an appraiser) and see if an appeal would be appropriate. Failure to appeal, much like lost rent from vacancies, means excess taxes cannot be recovered. All property owners should pay their fair

¹ In 2011 for the first time in history the Pennsylvania STEB did not appropriately publish the 2012 Common Level Ratios until August 6th; Some argue that this extended the filing date!

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share, but not more than their fair share. While these rules apply to all real estate, our experience is that except for newer construction or properties in distressed areas, most residential real estate is under-assessed to some degree. (The common complaint is “why is my neighbor more under-assessed than me...”) We must concentrate our efforts on over-assessed properties or properties not uniformly assessed.

HOW LONG IS AN ASSESSMENT FIXED?

Once an assessment is fixed on a Pennsylvania property, it cannot be changed by a County Assessment Office unless there is a change made in the property (e.g., new construction or improvements over \$2,500.00) (an interim assessment), subdivision, damage or destruction (Catastrophic loss), clerical error, or an appeal of the assessment initiated by a taxpayer or by a taxing district (other than the County), or there is a countywide re-assessment enacted by the County Board of Assessment. Therefore, a high selling price on property with a low assessment will not necessarily trigger an increase, (absent the previously mentioned factors) but many School Districts now do appeal such properties (hiring “bounty hunter” tax consultants to identify underassessed properties) and the Courts have permitted such selective appeals. There is a case pending in the Supreme Court which questions the practice. This trend is rapidly expanding and is focused on higher value commercial, industrial and investment properties.

WILL THE COUNTY AUTOMATICALLY LOWER MY ASSESSMENT IF IT'S TOO HIGH? WHAT ABOUT CLERICAL ERRORS?

If your property is over assessed, and therefore overvalued (or vice versa), the Board has no affirmative obligation to reduce it absent an appeal by the taxpayer (for the Board to do so would be illegal). Excess taxes paid as a result of an unappealed overassessment in a particular year are simply lost. In certain limited circumstances, clerical errors may be corrected retroactively up to six (6) years by appeal of the Taxpayer.

HOW CAN REDUCING REAL ESTATE TAXES INCREASE THE VALUE OF A PROPERTY? (“TAXLOAD”)

Income properties are generally valued by appraisers for tax purposes on a capitalization of the property's stabilized net operating income (NOI) (before debt service, depreciation or amortization), but after some deduction for a reserve for replacement. Real estate taxes are normally deducted as an expense to reach the NOI but since the property may be overtaxed, how is this taken into account?

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The appraisal profession has developed a method in which the NOI is determined before deducting real estate taxes. Then, after a capitalization rate (“cap” rate) is determined, the effective tax rate is added to the “cap” rate to get a tax adjusted cap rate and this is divided into the NOI before taxes. The cap rate is a percentage which, in effect, reflects the estimation of a fair rate of return on an investment on date of appraisal after taking into consideration such factors as risk of loss vs. potential of appreciation compared to the expectation of the money markets for a “safe” investment at a point in time. For example, in 2013-2014, when banks were paying 2-3% or less on savings accounts, the money markets expected a lower rate of return, even as risk rose, than in the 14-16% CD savings rate days of the early 1980’s! Today 1-2% CD’s are normal. An acceptable rate of return, at a point in time, might go up or down, depending upon market expectations for a particular property, its neighborhood, or a perceived higher risk.

Example 1: Assume a rental income property in Radnor Township, Delaware County with an assessment of \$9,750,000, which equates to a presumed value of \$15,000,000.00 at the 65% Common Level Ratio in Delaware County used for 2017, with real estate taxes of \$308,602 ($\$9,750,000 \times 31.6515$ (using 2017 County and Township and 7/1/16-17 School mills). Assume a hypothetical applicable capitalization rate of 6.5% (acceptable rate of return) for the property at this time. If the Net Operating Income (“NOI”) after deducting real estate taxes is \$700,000.00, and you capitalize that at 6.5%, you get a value of \$10,769,231. But, if you take the NOI before deduction of real estate taxes, i.e., \$1,008,602 [$\$700,000.00 + \$308,602$], and capitalize it at 8.5573% [6.5% cap rate plus the effective tax rate of 2.0573% (i.e., Total millage of 31.6515 times the 65% Common Level Ratio)], you get a fair market value of \$11,786,451 [$\$1,008,602 \div 8.5573\%$], which is still less than the assessed/presumed value of \$15,000,000, but \$1,017,220 higher than NOI at 6.5%. This assumes that the property will then be appealed and properly assessed at \$7,661,193 ($\$11,786,451 \times .65$), on which the tax would be \$242,488, not \$308,602. Thus a value enhancement of \$1,017,220 ($\$11,786,451 - \$10,769,231$) and a tax reduction of \$66,614.

Example 2: Assume the property were in the Borough of Yeadon, Delaware County, with a 2016 assessment of \$1,000,000, equating to \$1,474,926 FMV ($\$1,000,000 \div 67.8\% - \text{CLR for 2016}$), with an NOI after real estate taxes of \$80,000 and before deducting taxes of \$138,584 [$\$80,000.00 + \$58,584.00$] The \$80,000 NOI after taxes capitalized at 6.5% is a \$1,230,769 Fair Market Value. Assuming a capitalization rate of 6.5% plus (58.5840 mills x 67.8%) tax load factor of 3.97%, the overall tax adjusted cap rate would be 10.47%, which divided into the assumed \$138,584 NOI before taxes, results in a \$1,323,629 Fair Market Value amount and an assessment of \$897,420 ($\$1,323,629 \times 67.8\%$).

In the second example, there is a value enhancement of $\$1,323,629 - \$1,230,769 = \$92,860$ and a tax reduction of \$102,580 ($\$1,000,000 - 897,420 = \$102,580$ Assessment) X 58.5840 mills = \$6,009.50. (A 6.5% “cap rate” was used for the ease of the examples. “Cap” rates can vary.)

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WHEN AND HOW DO I FILE THE APPEAL AND WHEN IS THE BOARD OF ASSESSMENT HEARING?

The Statutory Appeal date is September 1 of the year preceding the tax year except that under 53 Pa.C.S.A 8844(c)(3) 2nd Class A (*Bucks 2nd class A*), Delaware and Montgomery County) through Eighth Class Counties can pick a date between August 1 and September 1 and most have picked August 1 (Berks County chose August 15). If an appeal is warranted, an appeal must be filed in writing with the appropriate County Board of Assessment Appeals on or before the appeal date of each tax year, with the exception of the City of Philadelphia (a First Class County), which is due the first Monday of October, and Allegheny County (a Second Class County), which is due the last day of March for its current tax year (except during Reassessment). Each County has its own separate form and procedure to follow with requirements ranging from “informal” to strictly formal. Once an appeal is filed, the Board notifies the taxpayer of a hearing date at least twenty (20) days following such notice. Except in Philadelphia and Allegheny Counties, most other County Board hearings are held in August and September. Procedures before the Boards vary widely depending upon the County, with many Counties promulgating extensive rules many of which are on the County Board’s web pages. The 2018 tax year appeal dates for a sampling of Counties is as follows:*

					Currently implementing a County-wide Reassessment
Berks County	2018	8/15/2017	Lancaster County	2018	
Bucks County	2018	8/1/2017	Montgomery County	2018	8/1/2017
Chester County	2018	8/1/2017	Philadelphia County	2018	10/2/2017
Dauphin County	2018	8/1/2017	York County	2018	8/1/2017
Delaware County	2018	8/1/2017	Lehigh County	2018	8/1/2017

*Note: A County could change the date between 8/1 and 9/1 in 2017 – so always check. Also a County performing a county-wide reassessment must give written notice of the new assessment for the following year on or before July 1 of the preceding year and give 40 days to appeal to the Board of Assessment Appeals. Lancaster County has announced Reassessment in 2017 for 2018

IS THERE A BOARD FILING FEE? COUNTYWIDE REASSESSMENT

Many Counties charge a filing fee to file an annual appeal to their Board of Assessment Appeals.

For example:

Bucks County [\$35 Residential/\$200 Commercial Industrial]
Chester County [\$25 Residential/ \$50 Commercial Industrial]
Cumberland County [\$10-\$25 Residential / \$75-\$150 Commercial Industrial]
Dauphin County [\$25 Residential/\$100 Commercial Industrial]
Delaware County [\$50 Residential/\$100 Commercial Industrial]

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Lackawanna County [\$35 Residential/\$125 Commercial Industrial]
Montgomery County [\$50 Residential/\$200 Commercial Industrial]

Many others also have a filing fee to the Board of Assessment Appeals (the legality of such fees is questioned). One should confirm the filing date and fee. These dates and fees do not apply in the year of a countywide re-assessment, or an interim assessment. (Forty (40) days from notice) On appeal of a Board of Assessment's decision to the County Court of Common Pleas, (due 30 days from date of Board's notice of change or no change) there is always a court filing fee, which varies by county. Some counties now have a filing fee for every document filed in the Court.

WHAT HAPPENS AT THE BOARD OF ASSESSMENT APPEALS HEARING?

At the County Board hearing, in a typical appeal, the taxpayer is expected to present a case to the Board establishing a fair market value of the property as of the filing date, e.g. 8/1/17 for 2018 Delaware County Appeal, which is less than the value implied by the assessment.¹ This is typically accomplished by an appraisal report and/or testimony from an independent appraiser, although occasionally an owner's testimony alone, or a settlement sheet for a recent sale in some residential cases may be sufficient. Taxing districts frequently send their counsel to Board hearings and cross examination of the taxpayer's expert appraiser is permitted. In some Counties, the owner is required to be present, although many taxpayer's lawyers have the owner provide a Power of Attorney or Warrant of Attorney, authorizing the lawyer to appear and act on behalf of the owner. Many Counties expect the appraiser to be present, although for these purposes some Counties treat residential properties differently than non-residential properties (questionable under the statute and the Pennsylvania and Federal Constitutions) and in many instances an appraisal report must be submitted in multiple copies 7 to 20 days before the hearing to be considered by the Board. Generally, County Boards do not permit an appraiser or other non-attorney tax consultant or "representative" to appear before them without an owner or the owner's attorney also being present (to avoid the Unauthorized Practice of Law by the non-attorney tax consultant "representative" which is a Misdemeanor) and such Boards typically give little weight to value testimony of an appraisal or valuation "expert" or "consultant" who is compensated on a contingent basis. (And such an appraisal violates the Uniform Standards of Appraisal Procedure USPAP and/or local Board's own rules).²

Often, the taxpayer's counsel will conclude that, for a variety of reasons, the Board will not make any change in assessment at that Board level regardless of testimony or evidence presented, and counsel may decide to not produce any information and simply take a denial for appeal to Court. Where some counties have a habit of denying any requested change, it is often strategically advisable not to spend the money on an appraiser, only to be denied. The Board appearance or denial

¹ Of course, if one is seeking a reduction for catastrophic loss, or a correction of erroneous information, there would be a different proof, as would be the case where a School District appeals to the Board to seek an increase based upon a recent sale. See also Downingtown.

² It is illegal for a non attorney to represent a taxpayer at a Board Hearing or in court. 42 Pa.C.S.A 2524; see also Westmoreland v. R.T.A., 767 A.2d 1144 (PA Cmmwlth. 2001).

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taken by the Owner or Attorney Representative cannot be avoided if an appeal to Common Pleas Court is indicated however, since otherwise this would be deemed an abandonment or withdrawal which cannot be appealed to Court.

DO I NEED AN APPRAISAL AT THE BOARD HEARING?

Unquestionably, a complete appraisal may be helpful at an appeal hearing before most Assessment Appeal Boards. However, often a property owner, particularly of large or complex properties, is unwilling or unable to obtain a formal appraisal of the property because of time or money constraints by the time of the Board appeal. Assuming that there is a case to be made for a fair market value lower than the implied value, and in light of the fact that an appeal of a denial to the Court of Common Pleas of the County may be made by either party which provides the appellant with a de novo trial, very often no testimony is given to the Board but a “denial” is simply requested with appropriate appeal to the Court of Common Pleas. In some counties there is such a backlog of cases to be tried, that spending money on an appraisal for the Board Hearing may not be wise, because by the time the case comes to trial, the appraisal will be stale and have to be updated for value for each year under appeal doubling the cost of appraisals. Appraisals may also now need valuations and assessment ratios of comparables per Downingtown.

WHAT HAPPENS IF THE BOARD OF ASSESSMENT DENIES FULL RELIEF?

Once a written decision of the Board is received, either granting some reduction or denying the appeal, if a further appeal is appropriate, it must be made by the Taxpayer’s lawyer within thirty (30) days from the date of the Board decision to the Court of Common Pleas of the County. The Court trial is de novo, meaning that nothing which transpired at the Board level is considered to be of record (except that any Board ordered reduction immediately goes into force on January 1st of the tax year following the Board decision – (July 1 for School tax) and the entire case must be presented again (often in greater substance) to the Court.¹ Depending upon the County, there is frequently negotiation between the taxpayer’s lawyer and the taxing district’s lawyer (the School District’s lawyer is often “lead” counsel because typically, the School District has the most revenue at stake (usually 80+%), but in other Counties the County’s lawyer is lead counsel) toward an amicable resolution but once the case is listed for trial (which can be anywhere from 6 to 24 months following appeal to Court) the taxpayer must have a formal appraisal ready with testimony from the preparer, as must the taxing district be ready to present its case. (The final result after Court appeal also does date back to the first day of the tax year appealed.) Some County Court Rules require submission of an appraisal by the Appellant within 60 days after appeal to Court and an exchange within Taxing Districts. Non-residential (e.g. income) Properties have more complex rules.

¹ Some exceptions for tax exemption cases.

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WHAT INFORMATION MUST I PROVIDE ABOUT THE PROPERTY IN COURT?

Some Counties permit Court "Discovery" in the form of extensive Interrogatories (written questions to be answered by the owner) or Deposition (oral questioning of a witness). Some Counties limit the required exchange of information typically to a rent roll, copies or extracts of leases, and three years of Income and Expense Statements on an income property with an exchange of appraisals (only the appraisal to be used at trial is relevant and admissible although taxing districts often seek old appraisals). After extensive review and preparation of trial, the case is then listed and tried before a County Common Pleas Judge without a jury, who, after considering all of the evidence, which is typically appraisal testimony from each side and after weighing what evidence including expert appraisal evidence is competent and credible, reaches a determination of fair market value and applies the Common Level Ratio (s) to determine the appropriate assessment for each year under appeal. Some Counties (Delaware, Washington and Allegheny) require that the case first be presented to an arbitration panel, a Master, or Board of Viewers with an appeal (de novo) then being permitted to the County Court of Common Pleas.

HOW IS FAIR MARKET VALUE DETERMINED?

By statute, the Court must consider the three approaches to value: the Income approach, the Comparable Sales ("market") approach, and the Cost approach to value, with the respective weight of each of these factors being at the discretion of the Judge to decide what a willing buyer would pay a willing seller, neither being under any constraint to buy or sell. Typically, the Judge weighs the evidence on these approaches, i.e., the expert testimony by each side's appraiser. Experience suggests that the Cost Method is usually the least persuasive except for newer or special purpose properties or unusual circumstances. Income is most relevant in rental properties and comparable sales the most relevant for commercial, industrial, and residential properties.

CAN A PARTY APPEAL THE COURT'S JUDGMENT?

Once a decision is rendered by the County Common Pleas Judge, either side may appeal this decision to the Pennsylvania Commonwealth Court (uncommon) which must hear the appeal. Upon the decision of the Commonwealth Court, after briefs are filed and oral argument made by the various attorneys, any party unsatisfied with the decision of that Court can petition the Pennsylvania Supreme Court asking that the Court consider granting a review, which is discretionary to that Court (and very rare).

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CAN A TAX APPEAL CASE BE SETTLED PENDING APPEAL? WHAT ABOUT SUBSEQUENT TAX YEARS?

At any stage in the case after the filing of the appeal to the County Court of Common Pleas, the parties can reach an amicable settlement at which time, in lieu of further trials and appeals, a stipulation to an agreed court order between the counsel for the owner and the taxing districts sets the assessment and fair market value for the years involved. An appeal of one tax year, as long as that appeal is pending in the Common Pleas Court, acts as an appeal of subsequent years although strategically it may be worthwhile to file an appeal of a subsequent tax year at the Board level as a protective measure. (Some Boards think they can prevent this approach.) If a case is appealed to and pending in the Commonwealth Court or Supreme Court, it is necessary for the taxpayer to file an appeal of subsequent years at the Board level to keep the appeal going for the subsequent years if desirable to keep open. Pennsylvania case law prohibits setting assessments beyond the tax years before the court even if by a proposed Court Stipulation.

While the filing date of the year before the tax year appealed is the final valuation date, the law is unclear if the same date a year later is used for the following year or years, or a January 1, of that year where the Court must determine an assessment for more than one year.

IS THERE A DIFFERENCE BETWEEN REAL ESTATE VALUE AND BUSINESS VALUE?

For assessment purposes, the Board and the Court may not consider any value other than the real estate value, i.e., the business value or special use of a particular location is not real estate value and cannot be assessed or taxed.

For example, a skilled nursing facility as an entity may have a certain value and many services, but this is a combination of real estate, business goodwill, equipment and the entrepreneurial skill in obtaining State licensure, certificates of need, that create the whole value. Only the real estate, i.e., something less than the whole “business value” may be taxed.

Other examples of business value being mistakenly included in real estate value: fast food or other franchise chains; hotel/motel; trade name; automobile dealerships; special use manufacturing and warehousing facilities; sports (tennis, golf, etc.) facilities.

DO I HAVE TO PAY THE TAXES WHILE UNDER APPEAL? WHAT IF I PAY UNDER PROTEST?

If you have appealed your assessment to court seeking to lower it you must nevertheless pay taxes in full at the current assessment. Failure to pay the tax may result in tax delinquencies and

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even a loss of the property at a tax upset sale or judicial sale, not to mention the 10% late payment fee and interest accruing on the unpaid assessed taxes. If the taxpayer pays each county, school or municipal tax with the statement on the check and with an enclosure letter “PAID UNDER PROTEST 25% must be escrowed by Taxing District per 53 Pa.C.S.A. § 8854(c) “the district may not use the 25% in its budget and must escrow these funds.” Philadelphia and Pittsburgh are not bound by this and not all taxing districts honor this request. Philadelphia often reduces the tax bill pending appeal in anticipation of a reduction.

If you subsequently obtain a tax assessment reduction it relates back to the first tax year appealed. Current Pennsylvania Law permits interest to be paid on monies refunded (running from date of overpayment but at a very low rate) however since many tax appeals are ultimately settled amicably prior to an actual court trial, taxing districts’ lawyers often require a waiver of interest on refunds. If a taxing district seeks an increase in tax and is successful, interest does not accrue until the Court Order assessing the increase and the tax payer usually has 60 days to pay at discount.

DO LONG-TERM LEASES AFFECT FAIR MARKET VALUE/ASSESSMENT?

A real estate owner who has entered into a long-term “arms length” lease contract fixing rental income to the landlord for a period of years may use that income stream capitalized to represent value (though lower than current fair market value) for purposes of a tax appeal even though lower than “fair market value” rent. Even the tenant who had negotiated the lower rent may argue (on behalf of its landlord if permitted by the lease) to reduce the real estate assessment because of the effect on the landlord, even though the tenant pays all taxes! A recent PA Supreme Court case indicates that improvements to such a leasehold property must still be currently assessed.

Example: Many supermarket chains and the U.S. Postal Service entered into long-term leases in the 1960’s, 1970’s and 1980’s, tying up the landlord for extended terms with multiple extension options, e.g., 20 years with three (3) 10-year options at very low rentals. Typically, these leases are “triple net” with the tenant being responsible for all taxes. Accordingly, the landlord sees no value to appealing excess assessments since all taxes are paid by the tenant! A vigilant tenant may obtain not only the benefit of a lower cost lease, but also reduced taxes on appeal because the real estate’s value for tax purposes is in the hands of the lease-burdened landlord. But now improvements will be taxed. But a land lease, with e.g. tenant financed improvements, does not exempt the improvements.

HOW DOES ENVIRONMENTAL CONTAMINATION AFFECT THE ASSESSMENT?

Environmental contamination can reduce and in some cases even eliminate the taxable value of real estate. You must prove the cost of clean-up and elimination of contaminants by appropriate

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experts at the time of trial. A true cleanup cost exceeding the fair market value of a property could reduce the assessment to zero.

WHAT IS A COUNTYWIDE RE-ASSESSMENT?

By law (except, questionably, in Philadelphia and Allegheny Counties), a County Board of Assessment may only re-assess the entire County (and not, for example, just a particular area or municipality – a so-called illegal spot assessment). Generally, re-assessment means to review and appraise every property in the County in a set “base year” with a view to setting the assessment initially at 100% of fair market value in the base year, usually a year or two before the actual assessment date as a base year at some PDR percentage (25%, 50%, 75% 100%) depending on County. As the annual STEB reports indicate, however, a 100% assessment rarely lasts a long time, or even a 50% PDR if chosen. The County may not put the Countywide re-assessment into effect until it has been completed for all municipalities in the County and in the same tax year with notice given by July 1 of the year preceding and then with 40 days to appeal to the Board. Obviously, if an assessment is raised, e.g., from 5.4% of value to 100% of value, and millages were unchanged, taxes would increase almost 2000%! The State law, therefore, requires that millage be reduced in the first year of the re-assessment so that the total tax revenue in dollars in the first year is not more than 100% of the previous non-revaluation year. (Or 110% with court approval.)

In 2013 Philadelphia raised its assessments in a countywide re-assessment to 100% of fair market value effective in 2014. Lehigh County went from a CLR of 35.6% in 2013 to a 100% Predetermined Ratio for 2014 using 2012 Base Year value. Lancaster County is expected to go from a 75.5% CLR (100% of 2005 year values) to 100% of 2015 Base Year Value for 2018.

WILL MY TOTAL TAXES INCREASE WITH A COUNTYWIDE RE-ASSESSMENT?

In the experience of this writer, commercial, industrial, and investment properties tend to be over-assessed or at least close to the Common Level Ratio while private residential properties tend to be under-assessed except for new construction or, occasionally, large or unusual residences. If all properties are brought to 100% of value at the same time, then previously under-assessed properties will have an increase while those close to or above the Common Level Ratio should have a decrease in taxes. All new assessments should be closely analyzed. Since hundreds of thousands of properties are re-assessed at once, there is little time to scrutinize and huge discrepancies can occur. Very few taxpayers whose properties are under-assessed in a new countywide reassessment, ask for the assessment to increase!

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CAN I ASK THAT MY PROPERTY BE ASSESSED AT BASE YEAR VALUE?

As above indicated, when a County re-assesses the entire County often a “Base Year” is chosen, meaning that all properties that are re-assessed are valued at some percentage of the value in a certain year. In Delaware County’s 2000 Reassessment, 1998 was chosen as the base year. In Chester and Montgomery Counties, which reassessed in 1998, the year 1996 was chosen as the base year. Other counties vary. A recent PA Supreme Court decision concerning Allegheny County, - Clifton, even questions base year validity.

It has been argued in Court, so far unsuccessfully, that a taxpayer should be able to prove his property’s worth as it sits today in the Base Year instead of values in the current year under appeal (multiplied by the applicable Common Level Ratio) based upon very specific statutory language. In many instances, value growth has not been uniform so a property worth \$1,000,000. in Radnor Township, Delaware County in 1998 and so assessed in 2000 at \$1,000,000 could be worth \$3,000,000 in 2014 today. Multiply that value times the 67.8% CLR would result in a higher assessment but proving the 1998 Base Year Value would make its assessment more uniform with other properties in the Township. The argument is used frequently in new construction and where School Districts initiate Welcome Stranger appeals. See also the Downingtown decision permitting proof of a ratio lower than the CLR for comparative properties, and Chartiers Valley. This is still being litigated.

WHAT LAW GOVERNS TAX ASSESSMENT APPEALS IN PENNSYLVANIA?

Prior to January 1, 2011, the authority for Pennsylvania’s real estate tax assessment law came from three sources. The first was Title 72 of Purdon’s Statutes (The General Assessment Law) the second was specific statutory provisions in Title 72 applying only to First Class Counties (Philadelphia), Second Class Counties (Allegheny) and Second Class A and Third Class Counties, and Fourth to Eighth Class Counties and the third was Pennsylvania Court decisions. In 2001, a commission was formed with the goal of simplifying and consolidating the assessment law for counties of second class A through eighth class. After ten years of work, Act 93 of 2010 was passed and became effective January 1, 2011. The aptly named “Consolidated County Assessment Law” replaced most of the assessment law previously under Title 72, (except that the General Assessment Law as affected by Specific First Class and Second Class County statutes was still applicable to First Class Counties, Philadelphia, and Second Class Counties, Allegheny) Consolidated County Assessment Law found a new home under Title 53 Pa.C.S.A. For the most part, the newly codified Consolidated County Assessment Law substantially reenacts the original General County Assessment Law, the Fourth to Eighth Class County Assessment Law, and the Second Class A and Third Class County Assessment Board Law pertaining to subjects of local taxation, and exemptions from taxation, and the method by which property is valued and assessed for taxation purposes. The new law, however, also codifies much of the case law that has existed alongside the statutory law. Several larger substantive changes

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include: telecommunication towers as a subject of taxation, the time period is extended in 4th to 8th class counties in which a property owner has to appeal following a countywide reassessment, a change has been made to reflect a Commonwealth Court decision which determined when interest begins to accrue on refunds due to a taxpayer, (the section states that it shall bear interest from the date of overpayment until the date of resolution) and a new section states that provisions concerning appeals shall not be construed to limit the right of an appeal based on an alleged violation of the "uniformity" requirements of the Pennsylvania Constitution in order to reflect the Supreme Court's decision in Downingtown. While these changes represent an attempt by the General Assembly to update an archaic property tax system, many experts believe additional changes are on their way. As long as the Pennsylvania Supreme Court continues to grapple with questions that remain unanswered by Pennsylvania legislators, property tax law throughout Pennsylvania will remain in a state of flux.

HOW IS TAXATION IN THIRD CLASS CITIES DIFFERENT?

Not all Cities are created equal under Pennsylvania statutory law. Third Class Cities are particularly unique in that they may be assessed triennially.¹ A triennial assessment effectively sets an assessment for a property for a three year period. As a result, an assessment can only be appealed every three years, and absent any of the factors discussed above, (i.e. new construction, clerical errors, catastrophic loss) a properties assessment cannot be changed or appealed for three years. Additionally, all cities within Pennsylvania, meaning first class, second class, second class A and third class cities can elect a separate predetermined ratio from that of the county they are in. Under the Consolidated County Assessment Law cities can elect to be governed by §8868 of Title 53 Pa. C.S.A. which allows a city to use a separate predetermined ratio different from that used by the county. If a city elects to adopt an established predetermined ratio different from that used by the county, then the city must apply the ratio selected to the actual valuation of properties supplied by the county to determine the assessed value of properties for tax purposes. The established predetermined ratio selected by the city, if different from the ratio selected by the county, may be set at any value up to and including the actual valuation supplied by the county. In order to elect to become subject to this section, a city must do so by adopting an ordinance stating as much and filing it with the Commonwealth. It should also be noted that legislation has been introduced in the Pennsylvania Senate in an effort to modernize and recodify the Third Class City Code.² The legislation seeks to remove obsolete sections, incorporate pertinent and updated language, consolidate common subjects and add some language that had been part of the last significant recodification, pertaining to the Second Class Township Code, which was enacted in 1995.

NOTE THE CITY OF CHESTER IN DELAWARE COUNTY USES A TRIENNIAL SYSTEM OF ASSESSMENT AND 9/1/17 IS THE APPEAL DATE OF ITS TRIENNIAL FOR 2018-2019-2020. BOTH THE CITY FOR CITY TAXES AND CHESTER-UPLAND SCHOOL

¹ As of now there are 20 third class cities operating under a commission form of government; thirteen cities have optional charters under the Optional Third Class City Charter Law of 1957; three have option plans under the Home Rule Charter and Optional Plans Law; and 19 have home rule charters. See, Pennsylvania Local Government Commission, Third Class City Code Recodification: Executive Summary.

² The bill was reintroduced as Senate Bill 874 in the 2011-2012 Legislative Session.

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DISTRICT (CHESTER CITY, UPLAND BOROUGH, AND CHESTER TOWNSHIP) USE THIS SYSTEM FOR SCHOOL TAXES. UPLAND AND CHESTER TOWNSHIP USE THE COUNTY ASSESSMENT FOR TOWNSHIP AND BOROUGH TAX. MANY LAWYERS BELIEVE THE CHESTER SYSTEM IS ILLEGAL.

SHOULD I USE THE SERVICES OF AN ATTORNEY OR A "TAX CONSULTANT" TO APPEAL MY TAXES?

As indicated above, tax consultants typically are not attorneys and as such cannot legally process an appeal beyond the Board of Assessment level. Most Boards of Assessment have rules which restrict the appearance of tax consultants without at least the owner being present since such a practice is the practice of law without a license ("Unauthorized Practice of Law"). A tax appeal involves not only a difficult question of value (many tax consultants are or were very qualified appraisers), but also complex issues of law and procedure. Many Pennsylvania Court decisions even affect the normal appraisal approaches (e.g., the long-term lease doctrine). An attorney generally will present the opinion of an independent appraisal expert whose report is prepared and presented after taking into account the appropriate legal complexities explained by the attorney. Further, experienced tax attorneys are aware that for certain larger or more complex properties, or in some Counties for most properties, little relief will be given at the Board level without the real possibility or actuality of appeal to Court for a de novo trial. An appraiser licensed in Pennsylvania cannot give an opinion of value where the appraiser's compensation is tied to a monetary result. Nor can that person "represent" the owner at a Board of Assessment Hearing or other venue.

While the Pennsylvania Rules of Professional Conduct For Lawyers ethically restrict attorneys from in-person or telephone solicitation of new clients, tax consultants and other non-attorneys are not so restricted. Therefore, the apparent interest of a tax consultant soliciting a potential tax appeal client should not be confused with the seeming reticence of an attorney who is subject to a much greater restriction upon initial client contacts which, in Pennsylvania, are limited to a directed mailing without prior personal contact. Professional legal representation is a must. The Commonwealth Court of PA has held that non-lawyer tax consultants appearing before a Board of Assessment are engaging in the Unauthorized Practice of Law, a Misdemeanor in Pennsylvania and an Unfair Trade Practice.

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REMINDER:

SAMPLE 2017 APPEAL FILING DEADLINES FOR 2018 TAX YEAR*

AUGUST 1, 2017	Bucks, Chester, Dauphin, Delaware, City of Chester (Delaware County) Lancaster*, Lehigh, Montgomery, York
AUGUST 15, 2017	Berks
SEPTEMBER 1, 2017	Adams, Cumberland, Franklin, Lackawanna, Lebanon, Luzerne, Monroe, Northampton, Northumberland, Perry, Pike
SEPTEMBER 1, 2017*	City of Chester for 2018, 2019, 2020 Triennial for City and School
OCTOBER 2, 2017	Philadelphia
MARCH 31, 2018	Allegheny

*If a County is undergoing a Countywide Reassessment, the appeal date is 40 days from the formal written notice, but the notice of reassessment must be sent before July 1, preceding the year to be assessed. There is also usually a notice sent earlier in the year giving opportunity for an informal information meeting, but the formal notice must follow. If a County Board seeks an increase in assessment during the tax year, (usually for new construction) thus is called an “interim” increase and the appeal date is 40 days from the notice.

Joseph Patrick O’Brien and Christopher H. Peifer and their law firm, KAO Law Associates (PA RE Tax Appeals LLC) and its predecessor law firm Kassab, Archbold, and O’Brien, L.L.C., have appealed literally thousands of properties throughout Pennsylvania’s Counties, including shopping malls and retail centers, assisted living facilities, major industrial sites, apartment projects and commercial office complexes, cell towers, PURTA & LURTA properties and executive residential properties. These properties have ranged from less than one million dollars to more than a half billion dollars in value. Appeals are typically handled on a percentage of savings basis with the client only responsible for filing fees and related expenses and appraiser fees where needed.

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