STATE AND LOCAL TAXATION: PENNSYLVANIA TAXING AUTHORITIES CANNOT LIMIT ASSESSMENT APPEALS TO COMMERCIAL PROPERTY

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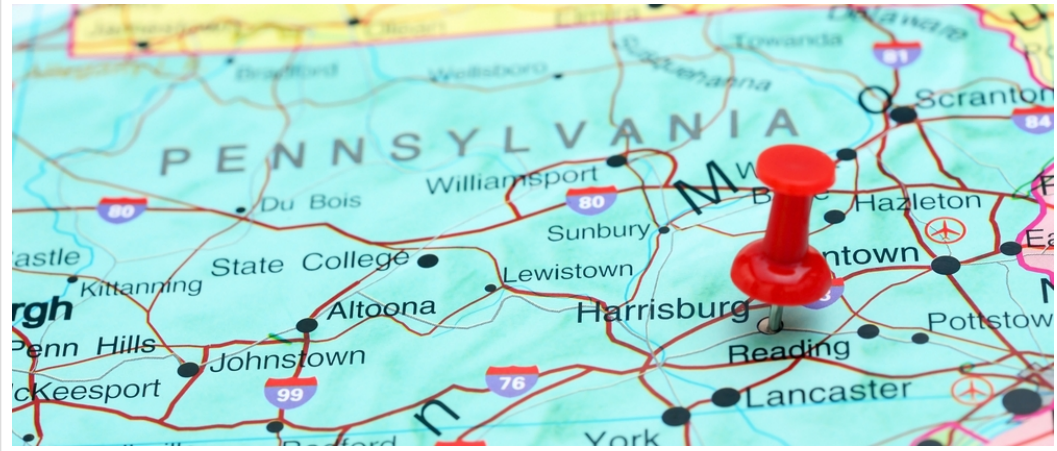

The Pennsylvania Constitution imposes a requirement that taxes be uniform: "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws." Pa. Const. Art. VIII, § 1. On July 5th, the Pennsylvania Supreme Court unanimously held that a tax authority cannot selectively target commercial property for assessment appeals in light of this uniformity requirement. *Valley Forge Towers Ap'ts N. LP v. Upper Merion Area Sch. Dist.*, No. 49 MAP 2016, 2017 Pa. LEXIS 1520 (Pa. July 5, 2017).

Taxpayers who owned commercial property in Upper Merion School District brought an action for declaratory and injunctive relief asserting that the school district had a practice of discriminating against commercial properties by targeting them for assessment appeals, while ignoring the fact that many single family homes were significantly under assessed to a greater degree than commercial properties. 2017 Pa. LEXIS 1520 at *2-*4. The taxpayers' complaint was dismissed on a demurrer, the Pennsylvania equivalent of a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, and that disposition was affirmed by the Commonwealth Court of Pennsylvania.

After rejecting a preliminary contention that the taxpayers had failed to exhaust administrative remedies, the Supreme Court turned its attention to the application of the uniformity clause, noting the basic principle that "a taxpayer is entitled to relief under the Uniformity Clause where his property is assessed at a higher percentage of fair market value than other properties throughout the taxing district." *Id.* at *17 (quoting *Downingtown Area Sch. Dist. v. Chester Cty. Bd. of Assessment Appeals*, 590 Pa. 459, 466, 913 A.2d 194, 199 (2006)).

The Court then addressed the background to its decision in *Downingtown*, which came in the context of legislation that directed the State Tax Equalization Board to annually calculate a common level ratio (the ratio of assessed value to current market value) for each county; that legislation raised the question whether evidence that a particular property had a disproportionately high assessment ratio when compared to other properties could still support relief as it had historically. *Id.* at *18. After noting that *Downingtown* had confirmed that this traditional approach to establishing an improper assessment remained viable, the Supreme Court observed that a passage from the case had caused some confusion for lower courts.

Specifically, the Court's opinion in *Downingtown* had indicated that "we do not find that this general uniformity precept eliminates any opportunity or need to consider meaningful sub-classifications as a component of the overall evaluation of uniform treatment in the application of the taxation scheme." *Id.* at *21 (quoting *Downingtown*, 590 Pa. at 469, 913 A.2d at 200). The Supreme Court explained that the quoted language in *Downingtown* was not intended "as a means of empowering the government to systematically engage in disparate treatment of sub-classifications of property." *Id.*

Next, the Supreme Court indicated that the Commonwealth Court had misread *Downingtown* in precisely that way, first (implicitly) in *Weissenberger v. Chester County Board of Assessment Appeals*, 62 A.3d 501 (Pa. Cmwlth. 2013) and then explicitly in *In re Appeal of Springfield School District*, 101 A.3d 835 (Pa. Cmwlth. 2014). *See Valley Forge Towers*, 2017 Pa. LEXIS 1520 at *22. In addition, the Court observed that *Springfield* had read the uniformity clause to preclude deliberate disparate treatment of taxpayers only when the disparity was the result of "wrongful conduct." *Id.* at *23 (quoting *Springfield*, 101 A.3d at 847). This was particularly problematic because it was "the opposite of what *Downingtown* actually said." *Id.*

Accordingly, the Supreme Court felt compelled to clarify core principles under the uniformity clause, writing as follows:

- "First, all property in a taxing district is a single class, and, as a consequence, the Uniformity Clause does not permit the government, including taxing authorities, to treat different property sub-classifications in a disparate manner." (citations omitted).
- "Second, this prohibition applies to any intentional or systematic enforcement of the tax laws, and is not limited solely to wrongful conduct." (citations omitted).

Against that background, the court turned to the allegations of the taxpayers' complaint. The Supreme Court highlighted several aspects of the taxpayers' allegations, including their assertion "that the School District has undertaken an approach which systematically treats commercial properties differently from other types of parcels, most notably single-family homes." *Id.* at *24. The Court also focused on the taxpayers' allegation that the school district had chosen to ignore single family homes and concentrated on commercial properties "for financial and political reasons," even though 80% of single family homes were under-assessed and single family homes were generally under assessed to a greater degree than the taxpayers' commercial properties. *Id.* Further, the taxpayers alleged that there were other ways for the district to increase its revenues without discriminating against certain property types. *Id.* at *24-*25.

The school district had argued that its approach was constitutional because it had developed the sub-classification of property based on reasonable objectives, as it sought to increase revenues efficiently and recoup its appeal costs. The district also asserted that the alternative was to force it to appeal every under-assessed property; it also argued that the taxpayers should have sought a county-wide reassessment instead. *Id.* at *25-*26.

The Supreme Court rejected the school district's arguments:

- First, it rejected the argument that the district would be forced to file appeals involving every assessment, noting that it was free to make decisions that were not discriminatory. at *27.
- Next, it rejected the district's argument that the taxpayers should have sought a county-wide reassessment, noting that it was based upon a lower court case that had not involved allegations of "intentional, systematic disparate treatment of a sub-classification of properties."

The Court then wrote more broadly on the application of the uniformity clause in the context of taxes on real estate, indicating that "we are not persuaded that the conventional rational-basis standard advanced by the

School District, a common feature of equal protection jurisprudence, applies in a dispute such as this." *Id.* at *27-*28. While prior case law did indicate that the legislature could adopt classifications in drafting tax laws, "property taxes are 'different' because 'real property is the classification.'" *Id.* at *28 (quoting *Clifton v. Allegheny Cty.*, 600 Pa. 662, 686, 969 A.2d 1197, 1212 (2009)). Consequently, the Court stressed "that all real estate in a taxing district is constitutionally entitled to uniform treatment." *Id.* (citations omitted). Against this background, the Court expressly ruled "that a taxing authority is not permitted to implement a program of only appealing the assessments of one sub-classification of properties, where that sub-classification is drawn according to property type—that is, its use as commercial, apartment complex, single-family residential, industrial, or the like." *Id.* at *29-*30. The Supreme Court emphasized that the requirements of the Uniformity Clause imposed limits on the manner in which statutory powers are utilized, thereby restricting the ability of the school district to use its appeal rights in a manner that was inconsistent with the uniformity requirement.

Turning to an argument offered by *amici* supporting the school district, the Court rejected the contention that the taxpayers' complaint was inadequate because all assessment appeals serve to enhance uniformity as it failed to account for the fact that the taxpayers had been targeted for appeals because of the type of property they owned, which exposed them to the significant costs associated with the appeal and subsequent litigation. As for the taxpayers' allegation that the school district targeted commercial properties for political reasons, the Supreme Court observed that "it should go without saying that the Uniformity Clause prohibits disparate treatment of sub-classifications of property to avoid political accountability." *Id.* at *31 (citing *Downingtown*, 590 Pa. at 470; 913 A.2d at 201).

Despite the sweeping language of its opinion, the Supreme Court emphasized that it was not barring taxing authorities from using any particular methodology to select assessments to appeal that did not focus on property types or residency status: "[N]othing in this opinion should be construed as suggesting that the use of a monetary threshold . . . or some other selection criteria would violate uniformity if it were implemented without regard to the type of property in question or the residency status of its owner." *Id.* at *32 (footnote omitted).

Plainly this is a victory for taxpayers, as the Court flatly states that school districts and other taxing authorities cannot utilize selection criteria for assessment appeals that single out particular property types. But the types of selection standards that would pass muster remain unclear. At one point, the Court suggested that the use of a monetary threshold might be permissible, citing the specific example of *Springfield*, where "the school district only appealed properties for which a recent sales price was at least $500,000 greater than its implied market value." *Id.* at 32 n.19. The Supreme Court, however, did not indicate that this approach would comply with the Uniformity Clause; it simply indicated that such a methodology was not before it. *Id.*

The problem is that a dollar threshold has the potential, as a practical matter, to eliminate assessment appeals of single-family homes if it is set high enough. It is unclear how the Court would react to a uniformity challenge that attacked a dollar threshold approach by arguing that it had a disparate impact on commercial properties because it eliminated single-family homes. Under *Downingtown*, "similarly situated taxpayers should not be deliberately treated differently by taxing authorities." 590 Pa. at 470, 913 A.2d at 201 (footnote omitted). In a vacuum, the use of the term "deliberate" would suggest that intent was necessary, but the Court explained its use of the term, indicating that "the term 'deliberate' does not exclusively connote wrongful conduct, but also includes any intentional *or systematic method of enforcement of the tax laws*." 590 Pa. at 470 n.10, 913 A.2d at 201 n.10. This language suggests that a uniformity challenge based on disparate impact might be viable without showing intent. Given the Court's comments in *Valley Forge Towers* on the significance of the taxpayers' allegation that the school district

sought to avoid political accountability, such a claim might well be viable if the effect was that the appeals were restricted to non-resident taxpayers.

It will be interesting to see how taxing authorities adapt their practices after *Valley Forge Towers* and how courts evaluate those changes.

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