

Publications

Client Alert: Ohio Supreme Court Decision a Positive Development for Ohio Retailers

Related Attorneys

Nicholas M.J. Ray

Lauren M. Johnson

Lindsay Doss Spillman

Steven L. Smiseck

Hilary J. Houston

Related Services

Taxation

CLIENT ALERT | 7.11.2017

On June 22, 2017 the Ohio Supreme Court issued a decision overturning over a decade of case law that consistently found that a recent arm's length sale was the best evidence of value for real property tax purposes regardless of the circumstances surrounding the sale. In its decision, the Court makes it clear that a sale price no longer conclusively determines value for tax purposes as it did under prior law. *Terraza 8 L.L.C v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2017-Ohio-4415 is a significant victory for Ohio taxpayers. The full opinion can be accessed [here](#).

This decision has significant and immediate impacts for Ohio taxpayers:

- All properties must be valued based upon the fee simple interest, one that is free of all encumbrances, including a lease.
- Properties that are subject to an above-market lease will no longer be taxed more than their competitors that may not be encumbered by a lease.
- Recent sale prices based upon a long-term, above-market lease will no longer control. The opponent of the sale can rebut the use of the sale price.
- A sale price must reflect the true value of the property's fee simple interest to be utilized for real property tax purposes.
- This decision also will impact tax appraisals and the data and adjustments utilized by appraisers when there is no recent sale.

This decision emanates from legislative changes signed into law on June 11, 2012, which became effective on September 10, 2012 in Am. Sub H.B. 487. The changes to R.C. 5713.03 specified that it is the true value of the **fee simple estate as if unencumbered** that is to be valued by the county auditor. It also changed the requirement that an auditor "shall" consider the sale price to be true value to the auditor "may" consider the sale price when valuing property for real estate tax purposes. The court's decision specifically overturns the 2005 decision in *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (2005), 106 Ohio

St.3d 269, and the litany of cases that followed.

Terraza is the owner of a retail fitness center constructed in 2007. For tax year 2013 the auditor valued the property at \$4,850,000. The board of education filed a complaint seeking an increase in value based upon a February 2013 sale at \$15,403,200. The board of revision increased the valuation of the property based upon the sale and the property owner appealed to the Ohio Board of Tax Appeals (BTA). At the BTA, *Terraza* presented an appraisal and testimony from an appraiser to establish that the sale price did not reflect the fee simple market value of the subject property. The appraiser determined that the existing lease rate was significantly above market-rate rent. The appraiser developed a sales comparison approach and income approach to value and reconciled to a value of \$7,055,000.

The BTA did not review the appraisal and concluded that the legislative changes did not overrule prior case law. The BTA then issued a decision affirming the sale price as value. Terraza appealed to the Ohio Supreme Court and argued that the changes to R.C. 5713.03 significantly changed the way taxing authorities must analyze a case involving a recent sale of a property encumbered by a lease. In its decision the court determined that the statutory changes permit taxing authorities to consider non-sale price evidence regarding encumbrances and their impact on the sale price when determining value.

The real property tax valuation landscape is undergoing significant change in Ohio. Vorys has extensive experience in state and local tax and works with property owners across Ohio and the country to help manage real property taxes. Contact your Vorys attorney with questions or concerns about real property taxes and how this tax impacts your business.