# Multistate Review of Property Tax Decisions and Developments

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Since the last edition of *The Evaluator*, there have been several notable decisions from courts and tax boards; and legislative developments in jurisdictions across the country.

**Valuation**

## THE KANSAS BOARD OF TAX APPEALS REDUCES ASSESSED VALUES FOR 11 WALMART PROPERTIES BY MORE THAN $120 MILLION

***In the Matter of the Equalization Appeals of Wal-Mart Stores, Inc. for the Year 2016 in Johnson County, Kansas*, Docket Nos. 2016-2691-EQ et al. (2019)**.

The Kansas Board of Tax Appeals has decided in favor of Walmart in recent tax appeals initiated by the retailer against Johnson County, KS for eleven of their stores.

To support their tax assessments of the eleven properties, Johnson County had compiled cost and income approaches for the properties and obtained appraisals from nationally recognized appraisers. Walmart's appraiser performed all three recognized valuation approaches for his appraisals but he placed primary emphasis on the sales comparison approach for the ten owner-occupied properties, and primary emphasis on the income approach for the one leased property. For the appraisals of the ten owner-occupied properties, the appraiser focused on analyzing fee simple sales in his sales comparison approach, and avoided utilizing sale/leaseback and build-to-suit sales.

After the examining the evidence, arguments, and valuation methodologies of the parties, the Board concluded that the income capitalization approach methodology utilized by Walmart's appraiser gave the best indication of the market value for all of the properties. The Board found that the appraiser's "selection and review of pertinent income approach inputs was supported and highly effective at distilling the market value of the subject real property." After slightly modifying the capitalization rates used by Walmart's appraiser in his

income capitalization approaches for each property, the total assessed values for the properties were reduced by over $120,000,000 for the two tax years at issue.

## KENTUCKY CLAIMS COMMISSION DETERMINES THAT FAIR CASH VALUE FOR A LEASED WALMART PROPERTY IS MOST CLEARLY REPRESENTED BY INCOME APPROACH UTILIZING CONTRACT RENT

***Agree Hazard KY, LLC dba Walmart v. Perry County PVA, et al.*; KY Claims Commission, File No. K17-S-163, May 22, 2019**.

The Kentucky Claims Commission (KCC) recently reversed a decision from the Perry County Board of Assessment Appeals for the tax assessment for a big box property that is leased by Walmart. The KCC determined that the fair cash value of the property was most closely represented by the income valuation of the leased fee estate. This valuation approach utilizes the actual contract rent paid by Walmart as the income. After applying market expenses and appropriate capitalization rates to the contract rent paid by Walmart, the Commission determined that the fair cash value of the leased fee estate was $23,250,000 as of January 1, 2017, and was $22,500,000 as of January 1, 2018.

## TENNESSEE STATE BOARD OF EQUALIZATION UPHOLDS COUNTY'S VALUATION FOR OWNER-OCCUPIED LOWE'S STORE DUE TO LACK OF RELEVANT COMPARABLE SALES

***In re: Lowe's Home Centers, Inc.*, Tenn. SBE, Dkt. No. 106409, (June 18, 2019)**.

The Tennessee State Board of Equalization recently upheld the Shelby County Assessor's valuation for a big-box Lowe's store.

As the appellant, Lowe's had the burden to prove that the Assessor's value should be reduced to the valuation opinion reached by its appraiser. Lowe's primary appraisal expert utilized all three recognized valuation approaches to value the property but he placed almost all of his weight on the sales comparison approach. All but one of his comparable sales were located outside of Tennessee and all were vacant at the time of sale. Lowe's appraiser used comparable big-box sales from Illinois, Michigan, Minnesota, Washington, Georgia, Colorado, and Florida. The appraiser had only personally visited the one comparable that was located in Tennessee, and he did not make adjustments to any of his comparables to account for their location compared to the subject property.

After considering the evidence put forth by the taxpayer and the critique of that evidence offered by the Assessor, the judge determined that the location of a property, vacant or not vacant, is of "paramount importance." The judge found that the appraiser's lack of adjustments to account for the "city, area of the city, and economic viability of a particular area" was fatal to his analysis. Since the judge found that Lowe's evidence did not support a reduction in value, the Assessor's value for the property was retained.

## INDIANA TAX COURT REVERSES BOARD OF TAX REVIEW'S DECISION FOR SHOPPING CENTER DUE TO IMPROPER CAPITALIZATION RATE DETERMINATION

***Madison County Assessor v. SEDD Realty Co.*** **(May 22, 2019), Indiana Tax Court No. 18T-TA-00012**.

This case stands for the proposition that a reviewing tribunal must be able to support its decision with the evidence on the record. The parties in this matter contested the value of a retail strip center in Anderson, Indiana. While both the county assessor and the owner agreed that the original 2009-2012 values were too high, they disagreed as to the extent of the reduction. Before the Indiana Board of Tax Review, both parties submitted appraisals, which were primarily based on the income approach to value. The Assessor's expert utilized a capitalization rate of 11.25%, while the owner used a capitalization rate of 14%. Upon review of the two approaches, the Board determined that the owner's expert "essentially valued a leased fee interest" rather than a fee simple interest and therefore rejected the conclusions of value. The Board did adopt the net operating income determined by the Assessor's expert. However, the Board then concluded that the capitalization rate the Assessor's expert used was inappropriate because the sales used to calculate the rate had significantly higher occupancy than the subject. The Board next reviewed the sales used by the owner in calculating its capitalization rate and chose three of the 13 comparable sales to determine the Board's own capitalization rate of 12%. The Board then applied this 12% to the assessor's net operating income to find value.

On appeal, the Indiana Tax Court reversed the Board's decision to use the 12% capitalization rate. The Court reasoned that the Board, in developing its own unique capitalization rate, failed to explain how it reached its decision. The Court noted that the 12% was neither the average nor the median of the rates set forth in the owner's report, which had rates between 10.9% and 16.24%. The Court further noted that the report had additional rate data that was not explained by the Board. Thus, the Court concluded that the Board's 12% capitalization rate was "*unsupported by any evidence on the record and thus, arbitrary and capricious – little more than throwing a dart at the board.*" The Court reversed and remanded the matter to the Board with instructions to use the assessor's capitalization rate, as it was the "only probative evidence" in the record.

## MINNESOTA TAX COURT FINDS THAT THE COMMISSIONER OVERSTATED THE VALUE OF A NATURAL GAS PIPELINE

***Northern Natural Gas Co. v. Commissioner of Revenue,*** **Minn. Tax Ct., Amended Findings of Fact, Conclusions of Law, and Order for Judgement, Dkt. Nos. 8864-R; 8976-R, June 4, 2019**.

Northern Natural Gas Company operates a 14,700 mile-long interstate natural gas transmission pipeline, portions of which cross 60 of Minnesota's 87 counties. In valuing the pipeline, the Commissioner's appraisers relied upon stock sales, which included all of the acquired property's property – both tangible and tangible assets to assess the pipeline in Minnesota.

The Commissioner had valued the pipeline at $2,250,081,300 for tax year 2015 and $2,466,132,200 for 2016 within Minnesota. The Minnesota Tax Court held that the taxpayer had established by a preponderance of the evidence that the value should be reduced based upon obsolescence as a result of mandated governmental regulations, even though the Commissioner argued that external obsolescence should not

apply claiming that these factors were within the taxpayer's control. However the Tax Court found that the taxpayer established that changes in the supply of natural gas was a cause of economic and external obsolescence, and also actually affected the utility and salability of the pipeline on the valuation dates. The Court found that the value should be $1,879,381,400 for 2015 and $1,848,039,200 for 2016 within Minnesota, properly apportioned among the affected counties.

## OHIO APPEALS COURT AFFIRMS BOARD OF TAX APPEALS DECISION TO VALUE ASSISTED LIVING FACILITY AT SALE PRICE

***Plain Local Schools Bd. of Edn. v. Stark Cty. Bd. of Revision*, 2019-Ohio-1746**.

Canton OH Senior Property, LLC ("Canton Senior") purchased a 76-unit assisted living facility. The purchase included the real estate and the on-going business. The conveyance fee statement filed at the time of the sale listed total consideration of $13,750,000, with $2,450,000 paid for items other than realty and $11,300,000 for real estate.

For tax year 2015, Stark County valued the property at $3,583,400. The Plain Local Schools ("Plain Local") filed a complaint seeking a value of $11,300,000. Plain Local submitted evidence of the sale and Canton Senior submitted an appraisal that opined to a value of the real estate at $5,530,000. The Stark County Board of Revision found value consistent with the appraisal and Plain Local appealed.

The Ohio Board of Tax Appeals ("BTA") found that the sale at $11,300,000 as allocated was the best evidence of value for tax purposes finding that Canton Senior failed to meet its burden to show that the sale was not the best evidence of value for the property. On review, the Court affirmed the BTA finding that the BTA properly analyzed the evidence before it, including the appraisal submitted by Canton Senior, along with the allocation made on the conveyance, and properly determined that the allocation made at the time of sale was not rebutted by the appraisal.

## NEW JERSEY TAX COURT FINDS SIGNIFICANT REDUCTION WARRANTED FOR FORMER MERILL LYNCH CORPORATE CAMPUS

***ML Plainsboro Ltd. Prntshp/Gomez v. Township of Plainsboro*, Case Nos. 002348-2005 & 001620-2006 *(unpublished) May 29, 2019***.

In a nice win for the taxpayer, the Tax Court found that the taxpayer overcame the presumption of the validity of the assessment after an 18-day trial.

The property is a 698,722 square foot office building, originally designed as a corporate campus for Merrill Lynch, which included a hotel and conference center. In 2004, just before the commencement of the appeal, the hotel and conference center was sold to another owner, but due to its configuration a number of easements and agreements were needed. Both the taxpayer and township retained appraisers to opine to the value for tax years 2005 and 2006. During an eighteen day trial, the parties presented their opinions of value. The difference in the value conclusions was considerable because the appraisers differed on the highest and best use determination for the property. The taxpayer's appraiser determined that the highest and best use was to be rented as corporate office space to a single tenant due to the property's configuration and utilized the income approach to find value. In contrast, the township's appraiser opined

that the highest and best use was as a special purpose, owner occupied corporate campus for which the cost approach to value was the most appropriate method to find value. The Court determined that the taxpayer's highest and best use was more credible because although the property was originally constructed as a corporate campus for Merrill Lynch, over time the property's use changed, and as of the valuation dates the property was more similar to typical office space than a corporate campus.

Based upon its analysis, the Court determined that for 2005 the value should be $99MM, consistent with the taxpayer's appraisal evidence, as opposed to $214.5MM opined to by the township's appraiser. For tax year 2006, the Court found value at $107.5MM. This case is a good example of the need for appraisers to formulate full opinions and ensure they have properly considered all approaches to value, especially in light of a difference of opinion on highest and best use.

## INDIANA TAX COURT UPHOLDS SPECIAL PROPERTY'S ASSESSMENT BASED ON ITS MARKET VALUE-IN-USE

***Wigwam Holdings LLC v. Madison Cty. Assessor, Indiana Tax Court*, 18-TA-00015 (May 8, 2019)**.

The owner of a former school building asked the Indiana Tax Court (the "Court") to overturn the state Board of Tax Review's (the "Board's") classification and valuation of the 220,000 square foot building, claiming that the special purpose property's highest and best use was vacant land.

The owner challenged the Board's recent reclassification of the entire property as utility/storage and its resulting assessment of the property. On appeal, the owner cited to the appraisal report it had submitted to the Board, claiming that because it had presented a compliant appraisal and the county assessor had not presented any rebuttal evidence, the owner had met its burden of proof. The appraisal stated that the subject property's highest and best use was as vacant land because the building was functionally and economically obsolete.

The Court disagreed with the owner, stating that merely presenting an appraisal does not establish a prima facie case for a reduction. The Court confirmed that the Board must find such an appraisal to be probative evidence of value, and agreed with the Board that the appraisal in the instant case was not probative. Specifically, the Court held that the appraisal was not probative because it provided an estimate of the subject property's market value rather than its market value-in-use. In so holding, the Court noted that while the market value-in-use for most properties is often equivalent to market value, special purpose properties like the subject are a rare exception. Because a special purpose property's current use is inconsistent with its highest and best use, its market value-in-use does not equal market value because a sales price will not reflect the property's utility. As a result, the owner's appraisal did not constitute probative evidence of the subject property's market value-in-use.

The Court also rejected the owner's argument that the current assessment failed to account for abnormal obsolescence. Because the owner did not affirmatively identify the causes of the obsolescence or quantify the amount of the obsolescence, the Court declined to overturn the Board's decision on this basis.

## OHIO'S EIGHTH DISTRICT COURT OF APPEALS FINDS BOARD OF TAX APPEALS ACTED UNLAWFULLY AND UNREASONABLY WHEN IT FAILED TO CONSIDER APPRAISAL EVIDENCE OFFERED TO REBUT LEASED FEE SALE

***Spirit Master Funding IX, LLC, et al. v. Cuyahoga County Bd. of Revision, et al.*, 8th Dist. Cuyahoga No. 107382, 2019-Ohio-1394**.

The owner of a restaurant property filed an appeal of the decision of the Ohio Board of Tax Appeals ("BTA") on the grounds that the BTA failed to consider the property owner's appraisal report. The subject property sold in two leased fee transactions: one in August 2014 and one in December 2014. The property owner filed a complaint seeking a decrease in the value of the subject property for tax year 2014 and tax year 2015. In connection with the 2014 case, the Board of Revision ("BOR") adopted the August 2014 leased fee sale price.

In support of its decrease complaint, the restaurant provided an appraisal report and testimony of the appraiser. The BTA retained the BOR's valuation and declined to consider the property owner's appraisal report. The property owner appealed the BTA's 2014 decision to the Ohio Supreme Court. The Ohio Supreme Court held that the BTA acted improperly when it failed to consider the appraisal report in connection with the 2014 case and remanded the matter to the BTA with instructions to consider the appraisal report.

The property owner presented the same evidence in connection with the tax year 2015 case. The BOR increased the value of the subject property to the December 2014 sale price finding that it was the best evidence of value. The property owner appealed the BOR's decision to the BTA, which again declined to consider the property owner's appraisal report.

The appellate court determined that the BTA erred again in the 2015 case when it refused to consider the appraisal report. The appellate court specifically noted that given the Ohio Supreme Court's decision in the 2014 case, the BTA erred when it ruled that the appraiser's testimony about the sales and sale price was hearsay. Following *Terraza 8, LLC v. Franklin Cty. Bd. of Revision*, 150 Ohio St. 3d 527, 2017-Ohio-4415, 83 N. E.3d 916, the appellate court also reiterated that the BTA was to consider not only the sale price, but any other evidence the parties present that is relevant to the value of the unencumbered fee simple estate. Therefore, the BTA acted unreasonably and unlawfully when it failed to consider the appraisal report.

## OHIO BOARD OF TAX APPEALS FINDS PROPERTY OWNER'S APPRAISAL NOT RELIABLE EVIDENCE AND DID NOT REBUT PRESUMPTION OF LEASED FEE SALE THAT OCCURRED AFTER SALE/LEASEBACK TRANSACTION

***QCA-Parma, LLC v. Cuyahoga Cty. Bd. of Revision*, BTA No. 2017-2169, (June 19, 2019)**.

The property owner appealed a decision of the Board of Revision increasing the value of the subject property based on a November 2016 leased fee sale. The November 2016 transaction was a sale/leaseback transaction, which the property owner argued was not good for setting value under the Ohio Supreme Court's decision in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 100, 2017-OOhio-7578 ("*State Farm*"). While the case was pending at the Board of Tax Appeals ("BTA"), the subject property was transferred again in a May 2017 leased fee transaction.

At the BTA, the property owner argued that the May 2017 sale was subject to an above-market lease, negotiated in context of a prior sale/leaseback transaction and therefore not indicative of fair market value. The property owner provided an appraisal report opining to a value of $1,400,000 as of tax lien date using the sales and income capitalization approaches to value. The BTA determined that based on the evidence, the November 2016 transaction was a sale/leaseback transaction because the same person signed as the agent of the seller and the agent of the lessee. Notably, however, the BTA rejected any reliance on the appraiser's statements about the circumstances of the November 2016 sale as hearsay.

The BTA stopped short of holding that the May 2017 sale following the sale/leaseback transaction would also not be an arm's length sale. The BTA rejected the property owner's argument that the fact that the lease was negotiated in the context of a sale/leaseback negated the utility of the sale in valuing the property as of tax lien date. The BTA also noted that no one personally involved with the property owner or the tenant testified about the details of the lease. Moreover, the BTA criticized the property owner because the only record of the actual lease is the Memorandum of Lease which contains the lease term, but no lease rate, and the only evidence of the lease rate was provided by the appraiser. The BTA also commented that the appraiser considered vacant "dark" properties in his sales comparison reports rather than those sold subject to a lease.

The BTA found that the appraisal report was not probative of the property's value and concluded that the May 2017 leased fee sale was the best evidence of value for the property.

## PENNSYLVANIA COURT UPHOLDS DISMISSALS OF PROPERTY OWNER'S CLASS ACTION COMPLAINT CONTESTING INCREASE COMPLAINTS FILED BY TAXING AUTHORITY

***Joseph Nissim Martel and Ester Martel, husband and wife, on behalf of themselves and all others similarly situated v. Allegheny County, City of Pittsburgh, Pittsburgh Public Schools, and Allegheny County Board of Assessment Appeals and Review*, No. 568 C.D. 2018, 2019 Pa.Commw. LEXIS 468 (May 22, 2019)**.

Residential property owners filed a class action complaint in equity on behalf of themselves and other property owners in the Allegheny County Court of Common Pleas. In their complaint, the property owners sought class wide relief from property assessments which were based on assessment appeals brought by the school district, County, and City.

The property owners contended that the Allegheny County Assessment Review Board (the "Board") erred by increasing their real property assessments based solely upon improperly submitted evidence of the sales prices for the subject property. The property owners contended that the Administrative Code precluded the Board from increasing the base year assessment value of a property absent physical changes or improvements to the property and that these appeals resulted in "'*de facto*' spot reassessments." By using evidence of current market value, rather than the base year assessment system, the property owners argued that the County violated the uniformity clause and due process clauses of the federal and state constitutions.

The trial court dismissed the property owner's class action complaint as legally insufficient. In essence, the Court of Common Pleas determined that the Administrative Code and Board Rule that the property owners relied upon were invalid because they conflicted with the authority granted to the Taxing Authority.

The appellate court ruled that the trial court properly dismissed the class action complaint but concluded that the trial court should have dismissed the complaint on the grounds that the property owners failed to exhaust the remedies available to them pursuant to the Assessment Law. Because the legislature provided a statutory remedy for challenging assessments, the Board was the property authority to hear all issues related to an assessment appeal.

## OHIO APPEALS COURT UPHOLDS DISMISSAL OF OWNER'S APPEAL AS UNTIMELY

***M&F Lexington, LLC v. Franklin Cty. Bd. of Revision*, 2019-Ohio-2022**.

An Ohio appeals court recently had occasion to interpret and apply certain statutory filing requirements governing appeals to the state's Board of Tax Appeals (the "Board"), upholding the Board's dismissal of a property owner's valuation appeal as untimely. The property owner asked the Court to overturn the Board's decision and to consider its appeal filed as of the date it mailed the appeal to the county Board of Revision (the "BOR").

The filing requirements for appeals of BOR decisions are governed by statute; notices of appeal must be filed with both the Board and the county BOR within 30 days after the mailing of the BOR decision. What is deemed "filed" is also set by statute, and depends on the method of delivery. In the instant case, the property owner filed its notice with the BTA electronically and via mail to the BOR. The property owner mailed the notice on the filing deadline, but the BOR did not actually receive it until several days after the 30-day deadline.

The property owner claimed that it had timely filed its notice with the BOR because it mailed the notice before the appeal window closed. However, the property owner failed to specify what method of delivery was actually used, and presented no evidence that it had used one of the statutorily-permissible methods (certified mail, express mail, or authorized delivery service). Though the property owner submitted affidavits from its representative and the BOR clerk, the Court noted that the affidavits were irrelevant without a sender's receipt showing the date of mailing by an appropriate method. Without such evidence, the Court deemed the date the BOR received the appeal as the date of filing. Because that filing date was five days after the 30-day deadline, the Court agreed with the Board that the appeal was untimely, and affirmed its dismissal.

## INDIANA TAX COURT REAFFIRMS DISMISSAL OF TAX APPEAL FOR HOTEL DUE TO LACK OF SUBJECT MATTER JURISDICTION

***Convention Headquarters Hotel, LLC v. Marion County Assessor* (May 22, 2019), Indiana Tax Court No. 19T-TA-6**.

In the last edition of the *Evaluator*, we reviewed an Indiana Tax Court decision regarding the ability of a taxpayer to appeal a real property tax valuation question to the Indiana Tax Court when the lower tribunal, the County Property Tax Assessment Board of Appeals, has failed to rule on an appeal. The Court held that a Board of Review must issue its determination within one-year of the filing of a petition; this is the "maximum time" afforded by statute. Failure to meet this one-year deadline permits the petitioner to invoke the Jurisdiction of the Tax Court over the valuation question. However, because the appeal at issue was filed before the one-year "maximum time" granted to the Board, the appeal was premature and had to be dismissed. *Convention Headquarters Hotels, LLC v. Marion County Assessor* (Jan. 25, 2019), Indiana Tax Court No. 18T-TA-00014. ("Convention Headquarters I")

The current decision follows from the Court's dismissal in *Convention Headquarters I*. The matter returned to the Assessment Board of Appeals for hearing, which was set for March 1, 2019. However, that very morning, the property owner again filed an appeal to the Indiana Tax Court, claiming that the March 1 hearing date was after the close of the "maximum time" granted to the Board for its review. Before the Court, the county assessor moved for dismissal, claiming that the board had until March 3 to finish its review. The Tax Court agreed with the county and dismissed the appeal as premature. The Court noted that it had set forth in *Convention Headquarters I* the proper calculation for determining the maximum time in which the board could act. This deadline was March 3. However, the property owner explicitly rejected the Court's calculation, substituting its own calculation of the maximum time based on other factors. This led the owner to file before the statutory time had elapsed.

**Exemption**

## ARIZONA AMENDS LOW-INCOME HOUSING EXEMPTION STATUTE TO BROADEN ENTITIES ELIGIBLE TO APPLY FOR EXEMPTION

***Arizona has passed a law amending the existing exemption for low income housing projects. L. 2019, S1300 will be effective on the 91st day following adjournment of the legislative session.***

In the prior version of the statute, affordable housing pursuant to IRS Code Section 42 or subject to a similar restrictive covenant was exempt from property tax only if the property was not used or held for profit. The statute further required that the property be owned by a charitable fund, foundation, or other charitable corporation to qualify for the exemption. Typically, the only types of affordable housing that received the exemption were for low income housing for the elderly or assisted living facilities.

This new law now permits the property to be owned by a 501(c)(3) or 501(c)(4) corporation or a limited partnership or LLC in which the general partner is an eligible non-profit. It may also be a single purpose entity that is wholly owned by one or more eligible non profits. This amendment is a positive development that will allow for low-income housing or LIHTC developments to receive the tax exemption on a much broader basis.

## COLORADO MODIFIES EXEMPTION FOR LOW INCOME-HOUSING

**L. 2019 H.1319 (effective on Sept. 1, 2019)**.

Colorado has updated its low-income housing exemption statute to eliminate a draconian penalty following revocation of exemption. Colorado law requires that a low-income exemption will be revoked if the partnership that owns the property distributes income, has income available for distribution, or sells the property. Under the former version of the exemption statute, if an exemption was revoked, the property tax administrator was required to levy and collect property taxes against the property from the date the exemption was initially granted plus interest. The new law provides that the administrator will instead terminate the exemption as of the date the property is transferred or the date income became available.

This is a helpful change to a disproportionate consequence for non-compliance.

## IDAHO DENIES EXEMPTION FOR LOW INCOME HOUSING BECAUSE PROPERTY NOT DEDICATED TO PROVIDING HOUSING TO QUALIFIED TENANTS

***Aspen Park, Inc. v. Bonneville Co.*, Idaho S. Ct Dkt No. 45679, (July 10, 2019)**.

The Idaho Supreme Court held that a low-income housing project did not qualify for exemption because the taxpayer had non-qualifying tenants renting units in the low income housing project.

The taxpayer owned a 72-unit low-income housing project. In 2016, the taxpayer leased 13 units to individuals that did not qualify as low-income because their income was exceeded 60% of the county median income level. The taxpayer argued that because of chronic vacancy in the apartment complex, it was permitted under the law to lease to higher-income individuals while some units remained vacant and available.

The taxpayer asserted that the word "dedicated" did not mean that units dedicated for lease to tenants with income not exceeding 60% of the county's median income level could not be leased to non-qualifying tenants if qualifying tenants were not applying for lease. Idaho law requires all of the non-profit organization's apartment units to be leased to qualifying tenants, except for a manager's unit. The Court held that the term "dedicated" requires all of the apartment units to be set apart for a complying use to qualify for exemption.

## OHIO BOARD OF TAX APPEALS DENIES CHARITABLE EXEMPTION FOR CITY-OWNED AIRPORT LEASED TO AVIATION EDUCATION ORGANIZATION

***City of Toledo v. McClain,* BTA No. 2017-956 (June 24, 2019)**.

The Ohio Board of Tax Appeals (the "Board") recently affirmed the state tax commissioner's denial of the City of Toledo's application for exemption from real property taxation for a hangar located within the Toledo Executive Airport. The City, which leased the subject property to the local chapter of a national aviation organization, claimed that the property was entitled to a charitable exemption because it was used to educate the general public about aviation and the science of flight.

The City argued on appeal that the organization's activities and use of the subject property qualified the property for an exemption. The Board cited the relevant charitable exemption statute, noting that a property owned by a municipal corporation like the City can only qualify for exemption if it is used exclusively for either accommodation or support of the poor, or is leased to the state or other political subdivision for public purposes. Because the subject property was not used for either of these uses, the Board found that it did not qualify for exemption.

The Board also noted that its jurisdiction was limited to a review of only the statutory sections under which the City had sought exemption. Because the City had only applied under the charitable section, the Board could not consider whether the subject property would qualify for any other exemptions, including the public property exemption.