

# Publications

## Multistate Review of Property Tax Decisions

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The following are property tax decisions of interest from around the country from January and February 2018. For further insight into these decisions, please contact your Vorys lawyer.

## Ohio Supreme Court Clarified Taxation of Affordable Housing Property

***Notestine Manor, Inc. v. Logan Cty. Bd. of Revision, et al.***, Slip Op. 2018-Ohio-2 (Jan. 2, 2018) (request for reconsideration pending)

The Ohio Supreme Court's recent decision provides property owners with clarification about the approach for valuation of certain government subsidized low income housing. Most notably, the court rejected the county's interpretation of *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 12, 2017-Ohio-2734, 85 N.E.3d 694 (*Network Restorations III*) as requiring, in all circumstances, a market rent approach for valuing government subsidized low income housing. Instead, the court stated that a market rent approach is not the only method of valuation for government subsidized low income housing and that a contract rent approach is an appropriate valuation method where those contract rents do not exceed generally available market rents. The county filed a motion for reconsideration, which is pending.

## New Jersey Tax Court Revokes Property Tax Exemption for Ambulatory Care Facility

***Township of Freehold v. CentraState Healthcare Services, Inc.***, Tax Court of New Jersey Docket No. 000047-2016; Docket No. 000048-2016; Docket No. 002998-2016; Docket No. 007636-2016

The New Jersey Tax Court held that an ambulatory care facility's exemption from property tax should be revoked because the company that runs the facility is organized as a for-profit corporation, despite being a subsidiary of a nonprofit corporation and despite the taxpayer's bylaws prohibiting members from receiving net earnings from the operation of the company.

The court distinguished *Intercare Health Systems, Inc. v. Township of Cedar Grove*, 11 N.J. Tax 423 (Tax 1990), aff'd, 12 N.J. Tax 273 (App. Div. 1991), certif. denied, 127 N.J. 558 (1992), and *Mega Care, Inc. v. Township of Union*, 15 N.J. Tax 566 (Tax 1996) because in those two cases, although the owners were subsidiaries of a non-profit parent hospital, they were organized as non-profit entities. The owner of the subject case was organized for profit.

## Nebraska Tax Equalization and Review Commission Upholds Valuation of Commercial Parcels Used for Water Retention

***Columbus Village Shopping Center Association, v. Platte County Board of Equalization***, Nebraska Tax Equalization and Review Commission, Case No. 16C 0059; Case No. 16C 0060

The Nebraska Tax Equalization and Review Commission upheld the valuation of two commercial parcels which collect water and trash runoff, finding that the taxpayer's argument that the lots have no productive use was flawed because the taxpayer can divide, sell, and augment the subject parcels without violating the agreement under which the taxpayer acquired the parcels.

## Ohio Supreme Court Addresses Continuing Compliant Provision

***MDM Holdings, Inc. v. Cuyahoga Cty. Bd. of Revision***, Slip Opinion No. 2018-Ohio-541.

The Ohio Supreme Court applied R.C. 5715.19(D) to hold that the property owner had properly invoked the continuing-complaint jurisdiction of the county board of revision over owner's challenge to county fiscal officer's valuation of property. The Ohio Board of Tax Appeals' decision affirming dismissal of complaint was reversed and the cause remanded.

## West Virginia Governor Proposes Phasing Out Personal Property Tax on Industrial Property

Governor Jim Justice has proposed a constitutional amendment that would phase out the inventory tax on industrial businesses. S.J.R. 9 was introduced January 18 at the governor's request. It would gradually lower and eliminate the taxable portion of personal property such as industrial machinery, equipment, and inventory personal property directly used in an industrial business activity. That activity is defined as "primarily manufacturing, mining, quarrying, oil extraction, or natural gas extraction excluding any working interest in an oil or gas well." However, the bill's provisions would not apply to the industrial personal property of public service companies.

Under the measure, new personal property purchased by industrial businesses on or after July 1, 2019, would no longer be subject to ad valorem taxation. S.J.R. 9 would start lowering the taxable portion of subject properties' assessed value in fiscal 2021 to 51.43 percent from the current 60 percent level. In effect, the inventory tax on these businesses would be fully phased out by fiscal 2027.

## New Jersey Tax Court Reduces Property Tax Assessments on Vacant Retail Building

**416 Route 10 Assocs. v. E. Hanover Twp.**; New Jersey Tax Court Docket No. 007748-2010; Docket No. 008742-2011; Docket No. 008615-2012; Docket No. 001169-2013; Docket No. 008219-2014; Docket No. 007860-2015

The New Jersey Tax Court reduced the property tax assessments on a vacant commercial strip center retail building for the 2010-2015 tax years, finding that the taxpayer's valuation using the income capitalization approach better represented the true values of the subject property than the township's sales comparison approach using unverified terms of sale and lease transactions.

Both parties provided appraisal evidence. The court found that the income method was the best indicator of value for the subject property and that the property owner's expert's was the better indication of value. The township's expert relied substantially on internet sites to verify comparable data while the owner's appraiser independently verified the comparable information.

## New Jersey Tax Court Reduces Business Center's Property Tax Assessments

**E. Gate Bus. Ctr. LLC v. Twp. of Mount Laurel**; New Jersey Tax Court Docket No. 014519-2010; Docket No. 009721-2011; Docket No. 009665-2012

The New Jersey Tax Court reduced the property tax assessments on an incoming-producing complex of office buildings and flex warehouse buildings, finding that the taxpayer's valuation using the income capitalization approach better represented the true value of the subject property.

The court accepted the owner's appraiser's market rent, which was higher than the competing appraisal. These rents were on a NNN basis. The court then accepted the capitalization rates, developed under the Band of Investment approach, with one adjustment—since the rents were NNN, the court removed the tax additur from the rate. There was no discussion regarding a vacancy-affected tax additur.

## Tennessee BOE Reduces Value of Apartment Complex

**In re HTG Chattanooga LLC**; Tennessee State Bd. of Equalization Appeal No. 107160

The Tennessee State Board of Equalization reduced the value of a 120-unit apartment complex after adopting an unloaded (i.e., before the tax additur) 6.35 percent direct capitalization rate due to the increased perceived risk related to the subject property's struggle to achieve stabilized occupancy. The evidence from the owner's appraiser indicated a capitalization rate range of 5.9% to 6.35% and the board concluded that the upper end of the range was appropriate.

## County Appraiser Asks Florida Court to Hold Long-Term Leased Land Taxable

**Jones v. Portofino Tower One Assoc. at Pensacola Beach Inc.**; Case No. SC18-83; L.T. No. 1D15-5888

The Escambia County property appraiser has asked the state supreme court to hold that land underneath beachfront condominium buildings is subject to ad valorem taxation, arguing that long-term leases of the land to the condominium associations give them ownership of the land. The Florida First District Court of Appeals has held that the lease did not provide equitable ownership because the leases do not automatically renew and therefore the exemption applied.

The federal government deeded the land on Santa Rosa Island to Escambia County in 1946, under the condition that the county never resell the land. The county later leased the land in Pensacola Beach to condominium associations and others, generally for a period of 99 years with an option to renew for an additional 99 years after renegotiation. As a result, there was not an automatic renewal of the leases.

Escambia County also leased a portion of the island to Santa Rosa County for a period of 99 years for a fee of \$100 a year, with the lease perpetually renewable for periods of 99 years. In 2014 the Florida Supreme Court ruled in *Accardo v. Brown* No. SC11-1445 (March 20, 2014) that the subleases of the land to condominium owners on the Santa Rosa County portion of the island gave them equitable title to the land and made them liable for the ad valorem property taxes. The First District distinguished this case to maintain the exemption of the property at issue.

## Colorado Board of Assessment Appeals Upholds Property Tax Assessment on Flight Department Facility

***Rare Air Ltd., LLC v. Property Tax Administrator***, Docket No. 69880 Colorado Board of Assessment Appeals.

The Colorado Board of Assessment Appeals upheld the property tax assessment on interest in improvements to a corporate flight department facility, finding that even though the taxpayer leases land owned by a tax-exempt airport, the taxpayer derives private benefit from real property improvements, and therefore the improvements are subject to tax.

## California Legislative Analyst's Office Publishes Report on Proposed 'Split Roll' Property Tax

A coalition of civil rights and community organizations is expected to begin collecting signatures for a ballot measure to tax commercial properties at market value while leaving in place the Proposition 13 protections for homeowners, a concept known as "split roll." The California Legislative Analyst's Office recently presented an analysis of a proposed constitutional initiative to tax commercial properties based on their market value to the state attorney general, finding that the proposal would increase property tax revenues by \$7 billion to \$11 billion per year and that the measure's overall effect on the health of the state's economy is uncertain.

## Ohio BTA Grants Partial Exemption for Educational and Behavior Health Facility

***Step by Step Academy, Inc. v. Testa***; Ohio Board of Tax Appeals Case No. 2016-2125 .

The Ohio Board of Tax Appeals reversed a decision by the tax commissioner and granted an educational and behavior health service provider with a partial property tax exemption after finding that the taxpayer is a nonprofit charitable institution and uses most of the subject property for charitable purposes. The property excluded from exemption included buildings leased to The Ohio State University and buildings slated for demolition because they were unusable.

## Ohio BTA Reduces Value of Home Depot Store

***Home Depot U.S.A. Inc. v. Montgomery Cty. Bd. of Revision***; Ohio Board of Tax Appeals Case No. 2017-174.

The Ohio Board of Tax Appeals reduced the value of a Home Depot retail store after determining that the taxpayer's evidence, which utilized the sales comparison approach and was supported by income capitalization analysis, was sufficient to justify reducing the value of the subject property. The board of education failed to present any evidence at the hearing rather choosing to challenge the taxpayer's evidence.