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

MINNESOTA TAX COURT REDUCES MENARDS VALUATION BASED UPON COST APPROACH TO VALUE

***Menard, Inc. (Coon Rapids) v. Cty. of Anoka*, Nos. 02-CV-15-2043 & 02-CV-16-1997 (Minn. T.C. Jan, 15, 2019).**

The Minnesota Tax Court found that a Menards store was entitled to a reduction in value for 2014 and 2015 based upon the cost approach to value. In finding that a reduction was justified, the Court placed 80% weight upon the cost approach and 20% weight on the sales comparison approach. The Court found that the sales comparison approach was less reliable because there were few comparable sales. The Court said that three of the comparables were different in terms of location, deed restrictions, use, market conditions and age. The Court said while adjustments were made to account for these differences, the magnitude of the adjustments called into question the comparisons.

Instead, the Court found that the land value and replacement-cost estimates were well-supported. The Court found land sales in both appraisals to establish the land value and relied upon the County's appraisal building costs because they included a heating-and-cooling adjustment and a story-height multiplier. Menards is expected to appeal this decision and seek the lower value indicated by its sales comparison approach.

LOWE'S APPEALS MINNESOTA TAX COURT DECISION TO THE MINNESOTA SUPREME COURT

***Lowe's Home Centers, LLC (Plymouth) v. Cty. of Hennepin*, No. 27-CV-16-04306 (Minn. T.C. Jan, 17, 2019).**

The Minnesota Tax Court recently issued a decision relying primarily upon a cost approach to determine the value of a Lowe's in Plymouth, Minnesota. Lowe's has appealed this decision to the Minnesota Supreme Court, where the Supreme Court must determine if it will accept the appeal and address Lowe's arguments.

Both Lowe's and Hennepin County submitted appraisal evidence utilizing the three traditional approaches to value: cost, market and income. Lowe's relied primarily on the market approach and the assessor placed primary reliance upon the cost approach. Lowe's in its petition to the Supreme Court argues that there is no support for the theory that buyers of big box properties rely upon the cost approach.

Lowe's on appeal is arguing that it was improper for the Tax Court to place primary reliance upon the cost approach for a 9-year-old property. The Tax Court placed 75% weight on the cost approach and 25% on the market approach. The Court found fault with the market approach due to deed restrictions on some of the market comparables, finding the market comparables were in inferior locations, that the subject property was "relatively new construction" and that the cost approach was well supported by the record. Lowe's asserts that these findings do not have credible foundation in the record and are contradicted by both appraisal experts.

TENNESSEE STATE BOARD OF EQUALIZATION FINDS KOHL'S DID NOT CARRY ITS BURDEN OF PROOF TO AFFIRMATIVELY AND CREDIBLY ESTABLISH A VALUE LOWER THAN THE COUNTY BOARD'S DETERMINATION

In re: Kohl's Department Stores Inc. Property ID: 062-021.305 Tax Year 2016, Appeal No. 108210, Feb. 20, 2019.

Kohl's challenged the assessment of an owner-occupied department store located in Cool Springs, Tennessee. Kohl's submitted an appraisal report and the testimony of the appraiser and contended that the property should be valued at $4,800,000.

Kohl's relied upon all three traditional approaches to value including the cost, sales comparison, and income approaches to value. The Board of Equalization found that the land sales relied upon by Kohl's were not sufficiently comparable and found fault in the appraiser's determination that the sale of land for an assisted living facility with inferior access was the best comparable land sale. The Board also found fault with Kohl's appraiser's extraction of depreciation based upon six former Target stores in Georgia, Tennessee and Florida. As a result, no credibility was placed upon the cost approach.

In reviewing the sales comparison approach to value, the Board took issue with the fact that the comparables utilized were the same six former Target stores. For the same reason that the cost approach lacked credibility, the Board also found that the sales comparison approach failed to account for the location and occupancy of the Kohl's in Cool Springs.

In reviewing the income approach, the first comparable rental was one of the former Target stores in a distressed market. However, this comparable was demolished for multi-tenant use and inconsistent with the use of a single occupant property like the subject property. The other rent comparables ultimately were not credible and the only comparable rental supported the assessor's rent of $8.40 per square foot. Further, the Board found that dated capitalization rates and lack of support for vacancy and expenses

failed to provide any basis to find that the County had overstated the value of the property on the assessment date. Therefore, the Board affirmed the County's determination of value at $10,326,500.

OHIO APPEALS COURT FINDS SALE OF LIMITED LIABILITY COMPANY IS GOOD FOR ESTABLISHING VALUE OF REAL ESTATE FOR TAX PURPOSES

***Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 2019-Ohio-634. (Feb. 21, 2019)**

The Eighth District Court of Appeals affirmed the decision of the Board of Tax Appeals (BTA) finding that the subject property's value was $16,000,000, based upon the transfer of a membership interest in the entity. The property consisted of office buildings with an underground parking garage. The Board of Education (BOE) filed a complaint seeking to increase the value from $11,529,900 to $16,000,000 based on the recent sale, not of the real estate, but instead of a limited liability company. The BOE presented the purchase and sale agreement and limited warranty deed showing the recent transfer of the property, a certificate of merger, and an affidavit from a managing member of the ownership entity asserting that the property had been transferred from a limited liability company (LLC) to another related LLC. The property owner argued that the sale was of an entity and not the sale of real estate and therefore could not be used to value property for real estate tax purposes.

At the BTA hearing, the BOE subpoenaed the managing member of the ownership entity, who testified that the LLC was created to hold title to the property. Additionally, the property owner asserted that other items were transferred as part of the transaction, including goodwill. However, the BTA found that the transfer of membership interest was done solely for the purpose of transferring title to the property.

The Court of Appeals held that the BTA's conclusion that the property was sold in a recent, arm's length transaction for $16,000,000 was reasonable and affirmed the BTA, despite the fact that the Ohio Supreme Court previously held in *Gahanna-Jefferson Public Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 89 Ohio St.3d 450, 2000-Ohio-216 and *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision*, 82 Ohio St.3d 193, 1998-Ohio-248 that an entity sale could not be relied upon to set value for tax purposes. The Ohio Supreme Court currently has a case pending before it on this issue. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* Supreme Court Docket No. 2018-1299.

INDIANA TAX COURT DISMISSES TAX APPEAL FOR HOTEL DUE TO LACK OF SUBJECT MATTER JURISDICTION

***Convention Headquarters Hotels, LLC v. Marion County Assessor* (Jan. 25, 2019), Indiana Tax Court No. 18T-TA-00014.**

This case considered whether the Indiana Board of Tax Review's (IBTR) failure to hold a hearing and issue a determination on a valuation complaint gave rise to a direct appeal to the Indiana Tax Court. At issue was the tax year 2010 value of a hotel located in Indianapolis. The assessor had increased the value from $18,479,100 to $86,987,100. The owner then appealed that value to the Marion County Property Tax Assessment Board of Appeals (PTABOA). The PTABOA took no action on the notice for almost seven years. On June 6, 2017, the owner filed a petition for review with the IBTR. However, the petition was neither called for hearing nor did the IBTR issue a determination. On May 1, 2018, the owner filed an appeal with the Indiana Tax Court, claiming that the Tax Court had jurisdiction over the matter because of the IBTR's

failure to timely consider the petition. Marion County, however, claimed that the owner could not bypass the IBTR but must wait for the Board to issue its determination before an appeal could be filed with the Tax Court.

The Tax Court found that Indiana law provides an appeal to the Tax Court when a Board of Review fails to issue a determination after "the maximum time [has] elapsed." However, that phrase is not defined. Under Indiana law, the IBTR must hold a hearing on a valuation petition within nine (9) months of the filing of the petition. The IBTR then has 90 days from the hearing to issue a decision. Based on these deadlines, the Court concluded that the IBTR 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. In this particular case, however, the Court noted that the appeal was filed with the Court 329 days after the petition was filed with the IBTR. Because the appeal was filed before the one-year "maximum time" granted to the Board, the appeal was premature and had to be dismissed.

CALIFORNIA BOARD OF EQUALIZATION IMPROPERLY FAILED TO CONSIDER EXCLUSIVE CONCESSION RIGHTS IN VALUATION APPEAL

***DFS Group LP v. Co. of San Mateo*, Cal. Cat. App. (1st App. Dist.)**

The First District Court of Appeals reversed and remanded a decision by the Board of Equalization where the Board failed to separate and value two types of property interests. The taxpayer operated a retail space inside an airport and had an exclusive lease and concession to sell merchandise duty free. The taxpayer argued that the assessor's valuation methodology failed to deduct the entire value of the exclusive concession rights because the assessor capitalized the entire minimum annual guaranteed amount. The assessor claimed that it was appropriate to capitalize the entire minimum annual guaranteed amount because it included the intangible rights that were necessary to put the property to its highest and best use. The Court found persuasive the taxpayer's argument that the minimum annual guaranteed amount was consideration for both tangible property rights and intangible concession rights, and remanded to the Board with instructions to revisit the valuation to separate the interests.

MICHIGAN TAX TRIBUNAL DEEMS A FOR-PROFIT COLLEGE TO BE AN EDUCATIONAL INSTITUTION THAT IS EXEMPT FROM PERSONAL PROPERTY TAXATION

***Specs Howard School of Media Arts, Inc. v. City of Southfield, Michigan*, Tax Tribunal Dkt. No. 14-002172**

The Michigan Tax Tribunal found that a for-profit secondary school was exempt from personal property taxation because it was an educational institution under Michigan law. While Michigan's statutory scheme exempts "educational institutions" from payment of personal property tax, the relevant statute does not define "educational institution." In its review of controlling case law, the Tribunal reaffirmed that the test to determine whether an entity is an educational institution revolves around whether the institution fits into the scheme of higher education of the state and if it were not for the existence of this institution, there would be an increased burden on the state supported colleges and universities.

In support of its argument that it was an educational institution that relieved a substantial governmental burden, Specs Howard School of Media Arts, Inc. ("Specs") argued that it was a nationally recognized accredited program and its students either work in the industry or transfer to a Michigan public college or university. The City of Southfield countered that because Specs taught a limited curriculum of three courses of study, utilized a base enrollment fee, its students took classes for a shorter period of time than Michigan's public universities and its graduation rates were lower than public universities, it was not an educational institution entitled to exemption.

In review of all of the evidence and relevant case law, the Tribunal found that Specs' educational programs relieved a governmental burden because students that did not go to Specs would be attending other public colleges and universities.

TENNESSEE STATE BOARD OF EQUALIZATION GRANTS PARTIAL REDUCTION IN VALUE OF LOW INCOME HOUSING COMPLEX BUT CRITICIZES PROPERTY OWNER'S SURVEY DATA AND CAPITALIZATION METHODOLOGY

In re: Spring Hill LP Property ID: 067 04026 000 Property ID: 067 04002 00 Tax Years 2016-2018

The owner of an 88-unit low income apartment complex sought a reduction in the complex's value, relying primarily on the income approach to value. The Board of Equalization compared the property owner's and assessor's income approaches in its review, taking issue with portions of each. The Board found that both the property owner and assessor had similar gross income numbers but that both had underestimated potential gross income based on the property owner's actual income statements. The Board adopted the owner's vacancy and collection loss numbers and dismissed the assessor's argument that the Board should ignore the "bad debt" because it would be "an item of concern for a potential purchaser." The Board criticized the property owner's operating expenses and capitalization rates because they were based on nationwide survey data. The Board also utilized the assessor's reserve for replacement number, finding that the property owner's number lacked sufficient support.

In its final determination, the Board determined a value of $4,000,000 for tax years 2016-2018, which is roughly the midpoint between the property owner's requested value of $3,435,400 and the assessor's value of $4,529,200.

TENNESSE BOARD OF EQUALIZATION FIND THAT EVIDENCE OF DIRECT CAPITALIZATION OF PRIOR YEAR'S ACTUAL INCOME INSUFFICIENT TO MEET BURDEN TO SUPPORT REQUESTED VALUE FOR MALL

***SVP II Stones River*, Appeal Nos. 120075, 120076 and 120077**

The Board of Equalization rejected the property owner's request to decrease the value of a mall located in Murfreesboro. The property owner based its case on its capitalization of its actual 2017 actual net operating income, downward trend in revenue and other challenges for the property and brick and mortar retail generally. The property owner, however, failed to present any comparative market data or discuss new leases or anticipated renegotiated leases. More importantly to the Board, the property owner did not at all address recent improvements to the property, including a movie theater, which had brought higher

customer volume at the mall. The Board found that the property owner failed to carry its burden and establish a more credible value.

MICHIGAN COURT OF APPEALS UPHOLDS DISMISSAL OF MORE THAN 80 UNTIMELY PROPERTY TAX PETITIONS DESPITE ALLEGED E-FILING SYSTEM ISSUES

***Centerpoint Owner LLC v. City of Grand Rapids*, Mich.App. No. 340710, 2019 Mich. App. LEXIS 113 (Jan. 22, 2019).**

The Michigan Court of Appeals recently affirmed the state Tax Tribunal's dismissal of more than 80 property tax petitions that were filed the day after the statutory deadline by the same agent. The agent, who had been acting on behalf of multiple taxpayers, asked the Court to overturn the dismissals because the Tribunal's e-filing system had suffered an alleged "system-wide outage" on the filing deadline.

The agent claimed that it had been unable to timely file the affected taxpayers' petitions because the e-filing system's duplicate payment protection feature caused multiple payment rejections and unanticipated delays on the filing deadline. After scrambling to address the resulting issues, the agent was ultimately able to timely file a portion of its clients' petitions, but did not e-file the affected taxpayers' petitions until the next day. The agent argued that the payment protection feature caused its untimely filing of the affected taxpayers' petitions, and, as a result, violated the taxpayers' due process rights.

The Court rejected the agent's argument, concluding that the Tribunal had provided the taxpayers with sufficient notice and opportunity for their petitions to be heard, including multiple options from which the taxpayers could choose to timely file the petitions. The affected taxpayers made the choice to have the agent file their petitions, and the agent chose to e-file other petitions before theirs on the filing deadline. The Court held that these choices, and not any official action of the Tribunal, resulted in the untimely filings.

The Court also rejected the agent's attempt to invoke a statutory exception that requires the Tribunal to consider petitions as timely filed if the e-filing system suffers a "system-wide outage." Holding that the term "system-wide outage" means a failure of the system itself, the Court concluded that the agent's issues with the payment protection feature did not qualify as such an outage. In addition, because the agent never actually attempted to file the affected taxpayers' petitions before the statutory deadline, the agent was foreclosed from invoking the exception.

COLORADO AMENDS APPEAL PROCESS FOR RENT-PRODUCING PROPERTIES; UPDATES APPEALS DEADLINES FOR CERTAIN COUNTIES

House Bill 19-1175

As of March 21, 2019, Colorado property owners appealing the valuation of rent-producing properties are required to provide two years of rental information to the county assessor including actual rental income, tenant reimbursements, itemized expenses, and renter data. In addition, county assessors are now required on appeal to provide all owners with the primary method and rates used to value the subject property.

Property owners in Colorado counties that have chosen to use the state's alternative protest process now have until July 15 (previously, June 30) to file a valuation appeal. The counties are required to notify taxpayers of appeal determinations by August 15 (previously, the last working day of August).

MASSACHUSETTS Appellate TAX BOARD REDUCES VALUATION OF SHOPPING CENTER

***KOP Perkins Farm Marketplace LLC v. Board of Assessors of the City of Worcester,* Mass. App. Tax Board, Nos. F323542, et al. (Feb. 6, 2019).**

The owner of a shopping center in Worcester, Massachusetts claimed that the center's vacant anchor space and supermarket anchor space were both overvalued.

In its appeal of the center's assessed value for fiscal years 2014, 2015, and 2016, the owner presented an appraisal that primarily relied on an income approach to value. The appraisal report showed that the vacant anchor space had been left in extremely poor condition and was functionally obsolete and unleasable. The appraiser reviewed rents from comparable rental properties with respect to each space, factoring in the vacant space's condition and the estimated restoration costs. The City of Worcester also submitted an appraisal that estimated much higher market rents for each space, though the estimates were not supported by evidence of comparable rental properties.

Ultimately, the Board ruled that the subject property was indeed overvalued, and ordered appropriate reductions for each of the fiscal years at issue. The state Tax Board found the owner's appraisal to be persuasive and credible and adopted the appraiser's estimated rent for the supermarket anchor space along with other portions of her income analysis. However, the Board found little evidence to support the full amount of the appraiser's estimated $1.6 million cost of curing the vacant space's defects, and adjusted her estimated base rent for that space accordingly.

WEST VIRGINIA COURT AFFIRMS COUNTY ASSESSOR'S USE OF COST APPROACH TO VALUE MALL

***Mercer Mall v. Gearhart*, W. Va. S. Ct. App. No. 18-0213 (March 11, 2019).**

The West Virginia Court of Appeals recently determined that a county assessor did not abuse her discretion when she utilized the cost approach, rather than the owner's proposed income approach, to value a regional shopping mall located in Bluefield, West Virginia. The Court held that an assessor's valuation is generally presumed correct, noting that assessors have discretion to apply the most accurate appraisal method for commercial and industrial properties. Because the property owner failed to provide adequate information to the assessor in support of its income approach, the Court found that the assessor acted reasonably when she used the cost approach.

KANSAS BOARD OF TAX APPEALS FAULTS COUNTY'S APPRAISER FOR FAILING TO ACCOUNT FOR OBSOLESCENCE OF SENIOR FACILITY, GRANTS SIGNIFICANT REDUCTION IN VALUE

***In the Matter of Arc Sweet Life Rosehill LLC LLC,* Kan. Bd. of Tax Appeals, No. 2017-4835-EQ, et al. (March 18, 2019).**

A Kansas senior health care facility recently achieved a $9.7 million reduction in its property value over two tax years after the state's Board of Tax Appeals rejected the county assessor's appraisal. Adopting the facility's appraisal, the Board noted that the county's appraiser failed to consider the property's functional and economic obsolescence as mandated by state law. Because the county's appraiser determined that any issues with the property were "due to management," the Board found that that facility's appraisal, which did account for obsolescence, was more persuasive.

MASSACHUSETTS APPELLATE TAX BOARD REJECTS OWNER'S APPRAISAL AND UPHOLDS ASSESSOR'S VALUATION OF SEARS DEPARTMENT STORE

***Sears, Roebuck & Co. v. Board of Assessors of the City of Cambridge*, Mass. App. Tax Board, Nos. F318456, et al. (Feb. 8, 2019).**

Sears appealed the assessed value of its department store attached to the Galleria Mall in Cambridge, Massachusetts for multiple fiscal years. Sears submitted an appraisal in support of its requested reductions in value. The city assessor did not submit an appraisal of its own, but did present an appraiser who reviewed and criticized Sears' report, and a second appraiser who testified about the leases relied upon by Sears' appraiser and the market in general.

The Tax Board rejected Sears' appraisal, finding that it was not persuasive or reliable evidence of value for a number of reasons. Ultimately, the Board concluded that the properties utilized by the appraiser were not comparable to the subject property. The properties were all located in suburban malls, unlike the urban Galleria, and were geographically remote from the subject. Most importantly to the Board, the leases the appraiser selected were from properties that were inferior to the subject, including two stores that had since closed. The Board also noted that the appraiser failed to explain the adjustments he made to determine market rent.

As a result, the Board found that Sears had failed to meets its burden to show that the subject property was overvalued, and issued a decision in favor of the assessor.

INDIANA TAX COURT AFFIRMS INDIANA BOARD OF TAX REVIEW'S DETERMINATION TO LOWER TAX ASSESSMENT FOR A MEIJER STORE AND REJECTS ASSESSOR'S USE OF THE COST APPROACH

***Clark County Assessor v. Meijer Stores LP*, Indiana Tax Ct., Cause No. 18T-TA-00003, 02/08/2019.**

The Indiana Tax Court affirmed a determination by the Indiana Board of Tax Review (IBTR) to reduce the tax assessment of a 180,000 square foot Meijer by $2.4 million for the 2008-2016 tax years. The Tax Court found that the Clark County Assessor could not demonstrate that the IBTR's determination was contrary to

law, unsupported by substantial evidence, or constituted an abuse of discretion. By affirming the IBTR's determination, the Tax Court found the taxpayer's appraisal methodology for the big box retail property to be more persuasive than the Clark County Assessor's appraisal methodology.

Meijer's appraisal relied on the sales comparison and income approaches to value the property. Their appraiser did not use a cost approach because he did not find it to be a reliable method to value big-box retail properties. The appraiser believed that most big-box retail properties suffer from significant obsolescence immediately upon construction since they are built to the exact specifications for a first generation user. Meijer constructed and opened this particular location in 1998.

On the contrary, the Clark County Assessor argued that the cost approach was the best valuation approach and necessary to prove that the property did not suffer any functional or economic obsolescence. In addition to relying on the cost approach, the Assessor's appraisal also relied on a sales comparison approach that utilized unadjusted leased-fee sale comparables, a second sales comparison approach that utilized fee simple comparables that were adjusted for vacancy, and an income approach that utilized build-to-suit lease rates.

By upholding the IBTR's decision, the Indiana Tax Court ultimately determined that Meijer's appraisal adequately identified the cause of obsolescence implicitly through the very large difference between the values computed under their sales comparison and income approaches and the valuation reached under the Assessor's cost approach. The Court also determined that the IBTR did not error in deeming the Assessor's analysis of leased-fee sales as not credible since the Assessor's appraiser did not make adjustments to account for the fact that the properties were encumbered by leases, which the appraiser simply could not prove reflected market rates. Finally, since the Tax Court found that the Assessor's generally accepted appraisal practices were based on an appraisal manual (*The Appraisal of Real Estate*) rather than any source of law, it determined that the IBTR's final determination could not be contrary to law.

INDIANA SENATE PASSES BILL THAT WOULD REQUIRE RECENTLY BUILT RETAIL PROPERTIES TO BE VALUED UNDER THE COST APPROACH

Indiana Senate Bill 623

The Indiana Senate recently passed Senate Bill 623, which would require recently built retail properties to be valued under the cost approach. The bill would (1) allow a county assessor to request the Department of Local Government Finance to perform a state-conducted assessment of commercial retail properties, and (2) would provide that the true tax value of retail properties that are occupied by the original tenant for which it was built to be valued under the cost approach for the first 10 years following construction. Although the bill was passed by the Indiana Senate, it still needs to be passed by the House of Representatives.

CAROLINA PANTHERS CHALLENGES INCREASED TAX ASSESSMENT FOR BANK OF AMERICA STADIUM INCREASED ASSESSMENT FOLLOWING 2018 PURCHASE OF FRANCISE

By law, counties in North Carolina are required to revalue properties at least every 8 years. The 2019 revaluation is Mecklenburg County's first revaluation in 8 years and the Carolina Panthers saw the County's tax assessment for Bank of America stadium increase from $135 million to $572 million. The stadium was built in 1996 and is one of the older NFL stadiums in the country. The increased assessment for the stadium was likely primarily due to the acquisition of the entire NFL franchise, which included the stadium, for $2.3 billion in 2018 by hedge fund billionaire David Tepper.

The Panthers have filed an informal review with the Assessor's Office to challenge the County's new tax assessment for the property. They claim that the fair market value of the stadium for tax assessment purposes should be $87.3 million, which they believe is a more accurate valuation of the stadium based on the recent purchase price of the entire franchise.

The difference between the value that the franchise attributes to the stadium and the Assessor's tax assessment could mean a difference of up to $4 million in property taxes, which will be clearer once the rates are set by the County in June. If the County and the Panthers are not able to resolve the dispute during the informal process, the franchise will have to file a formal appeal to the Board of Equalization and Review by May 20.

PENNSYLVANIA COURT TO DETERMINE SCOPE OF CONSTITUTIONAL PROTECTION AGAINST SPOT ASSESSMENTS IN PHILADELPHIA CASE

***Duffield House Assocs., LP, et al. v. City of Philadelphia,* Case No. 170901536, Philadelphia County Ct. of Common Pleas.**

The City of Philadelphia is seeking summary judgment on 13 consolidated claims which allege that the City engaged in unconstitutional spot assessment of some 65,000 commercial properties during the tax year 2018 reassessment. The petitioning taxpayers claim that the City's reassessments, which generated $118 million in new tax revenue, violated the Pennsylvania Constitution's promise of uniform taxation by improperly targeting non-residential properties.

In its motion for summary judgment, the City claims that it initially performed a mass reassessment that considered all properties, and found that residential properties as a whole had been assessed uniformly, while commercial properties had not. The City alleges that it only decided to focus on commercial properties after evaluating all properties and determining which properties were most in need of reassessment.

This case come on the heels of the Pennsylvania Supreme Court's landmark 2017 ruling in *Valley Forge Towers v. Upper Merion Area Sch. Dist*. that a state constitutional provision requiring uniform taxation bars taxing authorities from singling out certain subclasses of property for reassessment. The taxpayers allege that the City ran afoul of *Valley Forge* by focusing on commercial properties for reassessment while excluding residential properties. However, the City asserts that the case only prohibits taxing authorities from focusing on certain properties when there is another subclass that is even more underassessed. The

City claims that because there was not a more underassesed subclass, the reassessments were permissible.

The taxpayers have until April 22, 2019 to respond to the City's motion for summary judgment. A motion for judgment on the pleadings, filed by the affected school district, is also currently pending before the Court. If the case survives, it is set for trial in June. The outcome will likely hinge on the Court's interpretation and application of *Valley Forge*.

OHIO BOARD OF TAX APPEALS REJECTS RE-CREDITING SALE IN LIHTC TRANSACTION TO VALUE PROPERTY AND REJECTS APPRAISAL BASED ON UNRESTRICTED MARKET RENTS

***Abbey Church Village Housing Limited Partnership, et al. v. Franklin Cty. Bd. of Revision, et al.*, Ohio BTA No. 2017-1055 (January 28, 2019).**

The Ohio Board of Tax Appeals (BTA) rejected reliance upon a re-crediting sale transaction to value a low income housing tax credit property (LIHTC) for ad valorem tax purposes. The property at issue is a 160-unit apartment complex providing affordable housing under the LIHTC program. In addition, the property owner receives rent from some tenants from Section 8 portable tenant based subsidies from the Department of Housing and Urban Development (HUD).

The Dublin City Schools Board of Education (BOE) filed a complaint seeking to increase the value of the subject property for tax year 2016 based on a September 2016 transfer from Abbey Church Village Housing Limited Partnership to Abbey Church Village Limited Partnership. The property owner's representative testified as to the circumstances and details of the sale, including (1) that National Church residences was the majority owner of the general partner for both the buying and selling limited partnerships; (2) that the transaction between these two entities was for the sole purpose of obtaining financing for new construction to renovate the subject property; and (3) no cash or profit went to the seller.

The Franklin County Board of Revision (BOR) issued a decision increasing the valuation to the September 2016 transfer price. The BOR concluded that even though National Church Residence maintained a limited ownership interest after the sale, its 0.01% ownership interest was not enough to consider the sale as being among related parties.

Before the BTA reviewed the parties' competing appraisal the BTA rejected the reliance upon a re-crediting sale to value the property for tax purposes. The BTA classified the transfer as a financing transaction and therefore 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-Ohio-7578 (*State Farm*). Notably, the BTA did not reject the sale because of the ownership interest of the general partner both before and after the sale.

The parties offered competing appraisals. The BTA rejected the BOE appraiser's use of unrestricted market rents to value the property. However, the BTA did make adjustments to the property owner's appraiser's rent analysis noting that he improperly excluded portable Section 8 vouchers from his analysis and failed to consider the favorable location of the subject property in determining his rent comparable. The BTA also criticized the property owner's appraiser's capitalization rate because of his testimony at the BTA that there

is an undersupply of affordable housing. In coming to its independent valuation conclusion, the BTA adjusted the property owner's appraiser's estimated gross income to reflect the actual income for the subject property for 2015, utilized the property owner's appraiser's estimated expenses and FF&E conclusion, and utilized the BOE's appraiser's capitalization rate.