

Possible Real Estate and Use and Occupancy Tax Relief for Philadelphia Commercial and Industrial Property Owners

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A recent decision by the Pennsylvania Supreme Court puts in jeopardy all of the recent real estate tax reassessments completed by the City of Philadelphia for tax year 2018 as well as appeals initiated by the School District of Philadelphia in 2016 for tax year 2017.

The City's current practice is to certify the market values of any reassessed properties to the Board of Revision of Taxes on March 31st prior to the year that the assessment would be implemented. The City then relies on those certified values to determine the applicable tax rate when it creates its budget each summer. Accordingly, the Office of Property Assessment (OPA) submitted the values applicable for the 2018 tax year to the BRT on March 31, 2017. The City set the applicable tax rates during its summer budget sessions. However, unlike prior years, this year the City only reassessed commercial and industrial properties and excluded residential properties. The result was reported to be an increase of over \$118 million in new real estate taxes.

Shortly after the City finished its budget, the Pennsylvania Supreme Court decided the case of *Valley Forge Towers Apartments N, LP, et al. v. Upper Merion Area School District*. The case involved a challenge by property owners to the Upper Merion School District's practice of only appealing assessments on commercial properties. As with the recent reassessments by the City, Upper Merion was only seeking to increase the real estate tax assessments for high value commercial properties. The Pennsylvania Supreme Court found that the school district's practice violated the Uniformity Clause in the Pennsylvania Constitution. The court reaffirmed the principle that real estate within a jurisdiction should be treated as a single class and that tax authorities are not permitted to discriminate against commercial and industrial properties in favor of residential properties for purposes of real estate taxation.

While *Valley Forge Towers* clearly prohibits discriminating based on the character or use of a property, the decision left open the question of whether a taxing authority would be able to set a monetary threshold as a deciding factor. This is the very issue that the School District of Philadelphia is now facing. The School District appealed the tax assessments for a number of properties in 2016 for tax year 2017 and these appeals are still pending (for more information on those appeals see our alert, School District of Philadelphia to Challenge Real Estate Tax Assessments). In deciding which assessments to appeal in 2016, the School District of Philadelphia set a monetary threshold and only appealed properties it considered undervalued by at least \$1 million. As we noted, that threshold effectively excluded residential homes from the school district's appeals. Arguably, the School District of Philadelphia's appeals have the same result as the appeals by the Upper Merion School District in *Valley Forge Towers*, which has been raised in many of the cases that remain open. The School District of Philadelphia's decision, in its 2016 appeals, to use a monetary threshold instead of specifically stating that it was appealing commercial and industrial properties tests the question left open by the Supreme Court. In other words, is this distinction enough to avoid a violation of the Uniformity Clause?

The same cannot be said of the City's reassessments that are applicable for tax year 2018. The City did not have the benefit of the *Valley Forge Towers* decision, as that case was not decided until July 2017. As mentioned above, the City decided to reassess only commercial and industrial properties and certified those values at the end of March 2017. Unlike the School District of Philadelphia's appeals in 2016, the City did not use a monetary threshold in deciding which properties to reassess. It specifically focused on commercial and industrial properties, which *Valley Forge Towers* decided is a violation of the Uniformity Clause.

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As a result, any property owner that saw an increase from the City's recent reassessments may consider challenging the assessment based on *Valley Forge Towers*. Not only may real estate tax assessments be affected, but other local taxes such as use and occupancy taxes and realty transfer taxes could also be impacted, because they are based on the OPA's assessments.

The deadline to appeal the property assessments is October 2, 2017. A number of options may exist for property owners aggrieved by recent real estate tax assessments and anyone interested in pursuing a challenge to their assessment should speak to an attorney.

If you have questions or would like additional information regarding specific points regarding real estate tax assessment appeals, please contact James Vandermark (vandermarkj@whiteandwilliams.com; 215.864.6857), Kevin Koscil (koscilk@whiteandwilliams.com; 215.864.6827) or another member of our Tax and Estates Group.

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