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Selective Tax Appeals by School District Not Unconstitutional

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Special to the Legal

In *Vees v. Carbon County Board of Assessment Appeals*, the Commonwealth Court of Pennsylvania recently addressed the constitutionality of a school district's selective challenge of an assessment based upon a recent sale.

The property that was the subject of the tax assessment appeal consisted of 85 acres of unimproved land in Towamensing Township, Carbon County, Pa. As part of a countywide reassessment in 2001, Carbon County fixed the fair market value of the property at $92,250. In April 2002, Raymond and Kathleen Vees purchased the property for $170,000. Several months after the sale, the Palmerton Area School District filed an appeal with the Carbon County Board of Assessment Appeals, arguing that based upon the sale the fair market value should be increased to $170,000. After a hearing, the board determined the property's fair market value to be $161,900, resulting in an increase in the property's assessed value from $45,000 to $80,950.

The Veeses appealed the board's decision to the Court of Common Pleas of Carbon County, contending that the assessment was excessive and constituted a spot reassessment in violation of the uniformity clause of the Pennsylvania Constitution and the equal protection clause of the U.S. Constitution. At a de novo hearing before the trial court, the Veeses offered to prove, among other things, that the school district engaged in a practice of bringing selective tax assessment appeals where there was a recent sale of a property for a purchase price that exceeded the current assessment by $15,000. The trial court sustained a relevance objection, rejected the uniformity argument and adopted the board's determination of fair market value and assessed value. The taxpayers then appealed to the Commonwealth Court.

The arguments presented to the Commonwealth Court against reassessment raise important statutory and constitutional issues. The Veeses contended that under Section 602.1 of The Fourth to Eighth Class County Assessment Law, the board did not have authority to reassess the property on the basis of a recent sale.

Under that section of the law, a board may change the assessed valuation of a property in three circumstances: when a parcel of land is divided and conveyed away in smaller parcels, when the economy of the county or any portion thereof has depreciated or appreciated to such extent that real estate values generally in that area are affected, and when improvements are made to real property or existing improvements are removed from real property or are destroyed. The taxpayers took the position that because none of the three "triggering events" had occurred, the board could not change the assessed value of the property.

The Commonwealth Court rejected this argument, interpreting Section 602.1 to apply only to circumstances where the board itself initiates the revaluation. According to the court, because the school district had initiated the reassessment, and not the board, the limitations of Section 602.1 were inapplicable. Section 706 of the law gives school districts which feel aggrieved by any property assessment the same rights of appeal as an individual property owner. No triggering event is required for the filing of an appeal.

Moreover, under Section 702 of the law, in any appeal of an assessment the board is obligated to determine the market value of the property as of the date of the appeal, and then apply the predetermined ratio to establish the assessed value of the property. Thus, while a board may not reassess a property based upon a recent sale on its own initiative, it is statutorily required to determine the market value of a property in the case of a statutory appeal.

The Veeses also argued that the change in valuation constituted a spot reassessment in violation of the uniformity clause of the

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Pennsylvania Constitution and the equal protection clause of the U.S. Constitution. The uniformity clause of the Pennsylvania Constitution provides that "all taxes shall be uniform, upon the same class of subjects within the territorial limits of the authority levying the tax." The Commonwealth Court accepted the general proposition that spot reassessments by a body which has the power to value or change the value of property are improper.

The key here, again, according to the Commonwealth Court is who initiates the reassessment process — the board or a third party which does not have the power to change the value of the property. Case law on spot reassessment holds that on its own initiative a board cannot reassess less than an entire county except to correct errors or as otherwise specifically provided by statute. These cases, however, are inapplicable where the reassessment is initiated not by the board's action but by an appeal of a school district.

Citing *Millcreek Township School District v. Erie County Board of Assessment Appeals*, the court ruled that because school districts lack the power to assess, the prohibition against spot reassessments does not apply to school district appeals. Of course, if a school district deliberately and purposefully discriminates against a taxpayer in filing an appeal, such action could rise to the level of a constitutional violation; however, the exercise by the school district of its statutory right of appeal does not itself amount to deliberate, purposeful discrimination.

The court also concluded that the result of the appeal did not create an unconstitutional lack of uniformity. It determined that the requirement for uniformity is satisfied so long as all property in the taxing district is assessed at the same percentage of its actual value. In other words, so long as the ratio of assessed value to market value established by the county is uniformly applied in determining assessed value, the requirement for uniformity is satisfied.

Notably, the dissent disagreed with the majority on this point, finding that the application of a uniform ratio does not cure the lack of uniformity caused by the use of different valuation methods, specifically, the use of the base year value to determine the assessment of some properties as opposed to the use of the current market value to determine the assessment of the Vees' property.

Vees holds that a school district has the right to appeal assessments of properties in its jurisdiction, even if a change in assessment, if initiated by a board, would constitute an illegal spot assessment. It allows a school district to engage in a practice of "cherry picking," selecting the best candidates for assessment appeals, such as properties that are the subject of a recent sale.

The effect of this is that comparable properties in the same jurisdiction may be assessed at different amounts. If the taxpayer cannot demonstrate deliberate, purposeful discrimination by the school district in taking the appeal, or by the board in determining the appeal, constitutional safeguards may not be violated.

Significantly, the court noted several times in its opinion that the taxpayers did not challenge the constitutionality of any provision of the law. Thus, the court left the door open to the possibility that the relevant portions of the law might be subject to scrutiny under the Pennsylvania and United States constitutions. However, if, as the court said, the result of the appeal did not create an unconstitutional lack of uniformity, it is difficult to see how the statute that permits the appeal could be unconstitutional.

Ultimately, legislative action may be required to restore uniformity of assessments, for example, by subjecting school district tax appeals to the same type of "triggering events" as are applicable to action by boards of assessments. In the absence of such legislation, we are likely to see many more selective challenges to current assessments based upon recent sales of properties. •