

MAY 2020

County-Wide Property Tax Reassessments Coming to All Three Delaware Counties

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Court of Chancery holds that current assessments violate Delaware Constitution

In its May 8 opinion, the Delaware Court of Chancery declared that the current property tax assessment regime for all three of Delaware's counties violates Delaware constitutional requirements. The 149-page opinion concluded a portion of a lawsuit brought by the NAACP-DE and Delawareans for Educational Opportunity, each of which alleged that the current assessment regime denies adequate funding for Delaware schools, particularly those that serve disadvantaged students.

The Court's declaration came as no surprise to those familiar with the current assessment system. In New Castle County, properties are assessed at their July 1, 1983 fair market value, in Kent County, their 1987 value and in Sussex County, their 1974 value. In a 1977 decision, *Board of Assessment Review v. Stewart*, the Delaware Supreme Court approved of this "common base year" system as a means to achieve uniformity of taxation – a requirement established by Article VIII of Delaware's Constitution. It is unlikely, though, that the *Stewart* Court anticipated that those base years would drive assessments for 37, 33, and 46 years, respectively.

Perhaps most important to its May 8 decision is the Court's choice to leave the details of a remedy to "further proceedings." With no particular timetable for such "further proceedings," the Court has provided Delaware's state and local governments with time to design and fund a general reassessment as well as adopt features that satisfy the Plaintiffs' core complaint – inequity of funding for disadvantaged students. Indeed, one imagines that the Court hopes for such a result and is reluctant to impose a judicially-designed system.

What does the decision mean for the 2020-2021 tax year? How long will reassessment take?

Taxes for the 2020-21 fiscal year are assessed on July 1, 2020. Because a reassessment is impossible before that date, the Court's decision to defer consideration of a remedy leaves the current assessments in place until at least FY '22 or likely even later. Looking to the future, it is reasonable to project that new assessments and other changes required for an adequate remedy are several years away, particularly if the counties choose to appeal.

Will taxes go up as a result of a reassessment?

Not necessarily. A property owner's tax turns not only on assessed value (which is very likely to rise for all properties) but also on the tax rate applied to that assessment. Under Delaware law, revenue increases resulting from reassessments are limited to 15 percent in the case of counties, 9 *Del.C. §8002(c)*, and 10 percent for school districts, 14 *Del.C. §1916(b)*. And, while revenue-neutral rates are theoretically conceivable, the fact that this case is centered on the adequacy of school funding suggests that increased school revenue may be a component of the Court-approved regime. In the end, reassessment is likely to result in tax decreases for a few, tax increases for many, and little change for some.

If my property tax bill goes up, what are my options?

Your new tax bill will be based on your new assessment. While it is conceivable that the changes resulting from the Court-approved remedy will include a different process for assessment appeals, some sort of appeal process will no doubt continue to be available. We at Saul Ewing Arnstein & Lehr stand ready to assist you in that process.

Click [here](#) for a copy of the Court's opinion.

Saul Ewing Arnstein & Lehr attorneys are well-versed in Delaware's property tax system, and have represented numerous property owners in large property tax assessment appeals involving commercial and industrial properties, resulting in some of the largest assessment reductions in Delaware history. Our attorneys have also worked with charities and educational institutions in obtaining property tax exemptions, have lectured on the topic, and have advised state and local governments on property tax issues. For further information contact Richard A. Forsten, Bill E. Manning, Pam Scott or Wendie C. Stabler.

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