

School District of Philadelphia to Challenge Real Estate Tax Assessments

By: James Vandermark and Kevin Koscil

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Every year, October brings hobgoblins, witches, pumpkins and pumpkin spice, corn mazes and haunted houses. This year, however, if you own or lease commercial or industrial property, it may also bring something new and possibly far more frightening than any Wes Craven movie: a notice from the School District of Philadelphia stating it has appealed your property's real estate tax assessment.

On September 15, 2016, the School Reform Commission ratified a contract entered into by the School District of Philadelphia with the law firm of Fellerman & Ciarimboli Law, P.C. (Fellerman) and the appraisal group Keystone Realty Advisors, LLC (Keystone). Fellerman and Keystone have been engaged by the School District to challenge Philadelphia real estate tax assessments for 2017. Their primary goal is to bring appeals for properties they consider to be undervalued by at least \$1 million. This eliminates most residential properties and suggests the School District's focus is on commercial and industrial properties.

Typically, taxpayers challenge real estate tax assessments made by the Office of Property Assessment (OPA). The deadline for appealing an assessment for the following year is the first Monday of October. Appeals are brought before the Board of Revision of Taxes (BRT) where both the owner and City may present evidence of value.[1] The BRT issues a decision on the actual value of the property for assessment purposes, which either taxpayers or tax authorities may appeal to the Court of Common Pleas.

This year, however, will be the first time the School District of Philadelphia has ever engaged private counsel to review OPA assessments and bring appeals on its behalf (though school district challenges are common in other Pennsylvania counties). The School District is looking to collect some of the estimated \$75 million in unassessed and thus uncollected taxes believed to be due to underassessments.

The School District is required to follow the same process as taxpayers when filing appeals of OPA assessments. This includes filing the appeals by the first Monday of October, which this year is October 3rd. Since the School District must provide notice of appeals to all interested parties, property owners that are going to be subject to a School District appeal should receive a notice shortly after the October 3rd deadline. As the appellant, the School District will have the initial burden of showing the actual value of the property is higher than the original assessment by the OPA. Although, in contrast to cases brought by taxpayers, the challenge will be perfunctory at best. The City is unlikely to rebut any evidence presented to challenge the original OPA assessments because it benefits from any increase the School District achieves. Therefore, it will be necessary for property owners to be actively involved in the entire appeals process to avoid dramatic increases caused by the School District's efforts to increase assessments.

Effective representation is important when responding to a selective appeal initiated by a school district. Attorneys must fully comprehend and consider all appropriate challenges to the methods of valuation and the expert appraisals to be provided by the School District. This includes challenging appraisals and expert testimony that fail to comply with the Uniform Standards for Professional Appraisal Practice (USPAP). It also requires reviewing appraisals for compliance with requirements unique to tax assessment appeals for commercial and income producing properties.

Another important consideration is whether the School District's proposed values will comply with the Uniformity Clause of Pennsylvania's Constitutions. The Uniformity Clause requires that "all property must be taxed uniformly, with the same ratio of assessed value to actual value applied throughout the taxing jurisdiction." [2] In other words, even if the actual value of the property is

higher than the original assessment, it must be taxed at the same ratio as other properties. Therefore, the School District's appeals can be appropriately challenged by requiring the same treatment and ratio of assessment as other properties.

Regardless whether the assessment appeal process is to be initiated by the taxpayer or the School District, property owners should always consider the costs versus the benefits of going forward with an appeal. A number of factors should be considered, including the local tax rates, the likelihood of a reduced or increased assessed value, the period of years the appeal may cover, and the costs of litigation. Property owners should also take into account possible Realty Transfer Tax (RTT) consequences as well as the impact on any Use and Occupancy Tax (UOT). A property's assessed value is used to calculate UOT and, in some cases, RTT. As a result, not only real estate taxes, but also RTT and UOT will be impacted by the results of an assessment appeal.

It should also be noted that the School District's challenges to the 2017 assessments are in addition to the City of Philadelphia's efforts to reassess all commercial and industrial properties, which is currently under way. The City intends to complete the reassessment of commercial and industrial properties for the 2018 tax year. The 2018 assessments, which the OPA is likely to make available in early 2017, will automatically be incorporated into School District appeals that are still pending at that time.

If you have questions or would like additional information regarding specific points regarding the School District's assessment appeals, please contact James Vandermark (vandermarkj@whiteandwilliams.com; 215.864.6857) or Kevin Koscil (koscilk@whiteandwilliams.com; 215.864.6827).

[1] In recent years, the OPA has instituted a First Level Review (FLR) process whereby property owners can meet with City assessors and try to resolve assessment issues prior to the first Monday of October. This year's deadline for participating in the FLR process was May 20, 2016.

[2] *Clifton v. Allegheny Cnty*, 969 A.2d 1197, 1224 (Pa. 2009).

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.