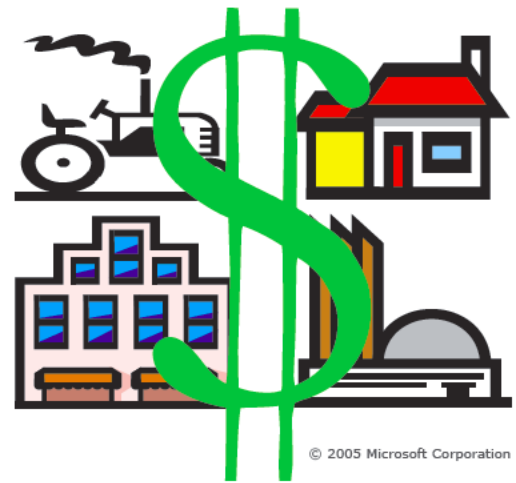


Real Estate Assessment Process in Pennsylvania . . . An Overview

In General

Real property taxes have been and continue to be a primary source of funds for Pennsylvania's local governments. The real estate tax is the only tax authorized by law in Pennsylvania to be levied by all classes of local governments in the state. Every property owner pays real estate taxes, unless otherwise exempted, to three independent taxing districts: the county, the municipality, and the coterminous school district.¹

The assessment process in Pennsylvania is governed, generally, by six different assessment laws.² Each class county is subject to a special assessment law. For counties of the first through third class, the General County Assessment Law supplements the more specific assessment law applicable to the respective county. Counties of the fourth through eighth classes are governed solely by the Fourth to Eighth Class County Assessment Law.³ As a result of the amendatory Act 167 of 2006, the formal short title of this law is the Fourth to Eighth Class and Selective County Assessment Law.⁴ However, for purposes of this article and accompanying footnotes, the law will be referred to as the Fourth to Eighth Class County Assessment Law. In addition, there are special assessment provisions applicable to third class cities.



¹ *Taxation Manual*, Governor's Center for Local Government Services, Pennsylvania Department of Community and Economic Development, 8th ed., Harrisburg, Pa., 2002, p. 2.

² 72 P.S. § 5020 101 et seq. ("The General County Assessment Law"); 72 P.S. § 5453.101 et seq. ("The Fourth to Eighth Class County Assessment Law"); 72 P.S. § 5342 et seq. (Third Class County Assessment Board Law); 53 P.S. §§ 37501 37562 ("The Third Class City Code," Article XXV (Taxation)); 72 P.S. § 5452.1 et seq. (Second Class County Assessment Law); 72 P.S. § 5341.1 et seq. (First Class County Assessment Law). Philadelphia and Allegheny Counties, which are subject to the provisions of the First Class County Assessment Law and the Second Class County Assessment Law, respectively, are also subject to home rule provisions relating to the assessment of real property in these counties. This article will not address these provisions, specifically, but some citations, as relevant, from the Allegheny County Administrative Code are referenced.

³ Section 801 of the Fourth to Eighth Class County Assessment Law provides: "The act approved the twenty second day of May, one thousand nine hundred thirty three (Pamphlet Laws, eight hundred fifty three) [the General County Assessment Law] . . . is hereby repealed, in so far as it applies to counties of the fourth, fifth, sixth, seventh and eighth classes, except as to the designation of objects, property and persons subject to and exempt from taxation for city and school purposes in cities, and the assessment and valuation thereof for such purposes."

⁴ Act 167 of 2006 amended the Fourth to Eighth Class County Assessment Law to delineate the method by which wind turbines would be assessed. *Because this amendment applies to ALL counties*, the name of the Fourth to Eighth Class County Assessment Law was changed to "The Fourth to Eighth Class and Selective Counties Assessment Law."

Key Definitions

“Base year.” “The year upon which real property market values are based for the most recent countywide revision of assessment of real property or other prior year upon which the market value of all real property of the county is based. Real property market values shall be equalized within the county and any changes by the board shall be expressed in terms of such base year values.”⁵

“Common level ratio.” “The ratio of assessed value to current market value used generally in the county as last determined by the State Tax Equalization Board pursuant to the act of June 27, 1947 (P.L. 1046, No. 447), referred to as the State Tax Equalization Board Law.”⁶

“Established predetermined ratio.” “The ratio of assessed value to market value established by the board of county commissioners and uniformly applied in determining assessed value in any year.”⁷

“Exclusion.” A property tax exclusion permits a *portion* of otherwise taxable property value to be excluded from taxation.⁸

“Exemption.” A property tax exemption permits the *entire value* of specified property to be excluded from taxation that would otherwise be taxable.

“Exoneration.” A property tax exoneration relieves or discharges a taxpayer from the liability of the payment of taxes.

“Immunity.” As a general matter, property owned by the Commonwealth and its agencies is immune from taxation by a local subdivision in the absence of express statutory authority.⁹

“STEB.” The State Tax Equalization Board.

Valuation of Property

Pennsylvania assessment laws require that real estate be valued according to its “actual value” and at a bona fide rate and price for which the property would separately sell.¹⁰ The courts have interpreted actual

⁵ 72 P.S. § 5020 102 (“The General County Assessment Law,” Section 102).

⁶ *Id.*

⁷ *Id.*

⁸ Examples of case law which discuss the distinction of exclusions versus exemptions, generally, include: *Commonwealth v. Sitkin’s Junk Co.*, 412 Pa. 132, 194 A.2d 199 (1963); *Rossi v. Commonwealth of Pennsylvania*, 20 Pa. Cmwlth. 517, 342 A.2d 119, 122 (1975); *Adelphia House Partnership v. Commonwealth of Pennsylvania*, 709 A.2d 967, 970 (Pa. Cmwlth. 1998).

⁹ *Commonwealth v. Dauphin County*, 335 Pa. 177, 6 A.2d 870, 872 (1939); see also *Delaware County Solid Waste Authority v. Berks County Board of Assessment*, 534 Pa. 81, 626 A.2d 528, 530 (1993); *Appeal of Board of School Directors of Owen J. Roberts School District*, 500 Pa. 465, 457 A.2d 1264, 1265 (1983).

¹⁰ 72 P.S. § 5020 402; 72 P.S. § 5453.602 (“The Fourth to Eighth Class County Assessment Law,” Section 602); 72 P.S. § 5348 (Third Class County Assessment Board Law, Section 7); and the Allegheny County Administrative Code, Article 209 (Office of Property Assessments) §§ 5 209.05, 5 209.09.

value to mean market value.¹¹ Market value has been defined by the Pennsylvania State Supreme Court as “the price in a competitive market a purchaser, willing but not obligated to buy, would pay an owner, willing but not obligated to sell, taking into consideration all the legal uses to which the property can be adapted and might reasonably be applied.”¹² To establish the “actual” value of property, the county may use current year market values or it may adopt a base year for market values. For the most part, properties are assessed at a set percentage of base year values. Property is only assessed at current market value when a countywide reassessment has been conducted and implemented. Unless a county reassesses all properties every year, the property assessments will be predicated upon base year values (the last year in which the county reassessed). The same methodology must be used to value property throughout the county; that is, when a county adopts a base year for market value, then all property in the county must be valued as of the same base year.

The assessment laws state that “the price at which any property may actually have been sold in the base year or the current tax year is to be considered but is not controlling. Such selling prices can be increased or decreased as part of the valuation process to accomplish equalization with other similar property within the taxing district.”¹³ Recent sales of comparable properties, that is, properties of a similar nature, are persuasive but not conclusive in helping to establish the market value. The properties selected need not be identical. The sales prices, however, are useful in showing relative values by bringing out characteristic qualities, whether similar or divergent. Comparison based on sales may be made according to location, age, income, expense, use, size, type of construction and in numerous other ways.¹⁴



When valuing property, three approaches must be **considered** in conjunction with one another; they are cost (reproduction or replacement, as applicable, less depreciation and all forms of obsolescence), comparable sales, and income approaches. Although all three approaches must be considered, they do not all have to be **used** in arriving at the final valuation of the property. The approach used may differ depending upon the type of property involved (e.g., commercial, residential, income-producing).

Many factors are considered in arriving at the fair market value of property. One very important consideration is the highest and best use of the property in question. It is not only the present use of a property that affects its value, but all of the uses including the highest and most profitable use to which

¹¹ *Baldwin Lima Hamilton Corp.*, 412 Pa. 299, 194 A.2d 434 (1963); *Buhl Foundation v. Board of Property Assessment, Appeals and Review of Allegheny County*, 407 Pa. 567, 180 A.2d 900 (1962).

¹² *Buhl Foundation v. Board of Property Assessment, Appeals and Review of Allegheny County*, 407 Pa. 567, 180 A.2d 900 (1962); *U.S. Steel Corp. v. Board of Assessment and Revision of Taxes of Bucks County*, 422 Pa. 463, 223 A.2d 92 (1966).

¹³ 72 P.S. § 5020 402 (“The General County Assessment Law,” Section 402); 72 P.S. § 5453.602 (“The Fourth to Eighth Class County Assessment Law,” Section 602); 72 P.S. § 5348 (Third Class County Assessment Board Law, Section 7); 72 P.S. § 5452.4 (Second Class County Assessment Law, Section 4); Allegheny County Administrative Code, Article 210 (Assessment Standards and Practices) § 5 210.02.

¹⁴ *McKnight Shopping Center, Inc. v. Board of Property Assessment, Appeals and Review*, 417 Pa. 234, 209 A.2d 389 (1956).

the land is adaptable and available. The possible demand for such use affects the market value.¹⁵ Highest and best use, then, “is that use of a property that will generate the highest net return to the property over a reasonable period of time.”¹⁶ Highest and best use of property must be supported by the following criteria; the use must be:

- ◆ Legally permissible;
- ◆ Physically possible;
- ◆ Financially feasible; and
- ◆ Maximally productive.¹⁷

The courts have recognized that “economic reality” factors also influence real property values.¹⁸ As mentioned previously, the valuation placed on a property should reflect what a willing buyer would pay in the open market for all the property rights that the present owner will transfer to him. A buyer would likely discount the price of a property due to “restrictions” or “regulatory requirements” or “encumbrances” that are tied to the property. For example, if income restrictions based on applicable federal regulations or income restrictions based upon bona fide contractual obligations are attached to a commercial property, the fair market value of the property would be “deflated” because a buyer cannot anticipate income at a current market value.¹⁹ Thus, the present market value should logically reflect the economic dynamics impacting the property as it presently exists.

Calculating the Tax Bill

Once the market value of the property is established, then the county predetermined ratio is applied to the value to determine assessed value. The board of county commissioners in each county is empowered to set the county predetermined ratio. This ratio of assessed to market value may not exceed 100 percent. The county predetermined ratio is then applied to the base year value or the current market year value to calculate the assessed value of properties throughout the county.

An assessment, then, is a percentage of the market value of the property. The assessment is the foundation which the taxing authorities use to determine the amount of real estate taxes based on their tax rates.

For example: If the current market value or base year value of Property A is \$100,000 and the county’s predetermined ratio is 40 percent, then the assessed value is \$40,000 [$\$100,000 \times 40$ percent]. Hypothetically, the county may levy five mills for the real estate tax; the township in which the property is located may levy ten mills for the real estate tax; and the coterminous school district may levy 20 mills

¹⁵ *Whitcomb v. City of Philadelphia*, 264 Pa. 277, 107 A. 765 (1919); *Brown v. Forest Water Co.*, 213 Pa. 440, 62 A. 1078 (1906); *Olson v. United States*, 292 U.S. 246, 54 S. Ct. 704, 78 L. Ed. 1236 (1934); *Pittsburgh Des Moines Steel Co. v. Board of Property Assessment, Appeals and Review of Allegheny County*, 103 Pa. Cmwlth. 61, 519 A.2d 1080 (1987).

¹⁶ International Association of Assessing Officers, *Property Assessment Valuation*, 2nd ed., p. 31.

¹⁷ *Id.* at 32.

¹⁸ *In re Johnstown Associates*, 494 Pa. 433, 431 A.2d 932 (1981); *Appeal of Marple Springfield Center, Inc.*, 530 Pa. 122, 607 A.2d 708 (1992).

¹⁹ *Appeal of Marple Springfield Center, Inc.*, *supra.*, note 18.

for the real estate tax. The owner of Property A would, therefore, be liable to pay real estate taxes in the amounts of \$200 to the county [$\$40,000 \times .005$], \$400 to the township [$\$40,000 \times .01$], and \$800 to the school district [$\$40,000 \times .02$]. This is the general method by which property is valued and assessed throughout the Commonwealth.

Thus:

$$\text{MARKET VALUE} \times \text{COUNTY PREDETERMINED RATIO} = \text{ASSESSMENT}$$

$$\text{ASSESSMENT} \times \text{MILLAGE RATE} = \text{TAX BILL}$$

All properties within the taxing district must be “uniformly” assessed at a similar ratio. This is necessary in order to satisfy the requirements of Article VIII, Section I, of the Pennsylvania Constitution that provide that all taxes must be uniform on the same class of subjects within the territorial limits of the authority levying the tax. The controlling principle in matters of valuation is that no one taxpayer should pay any more or less than their proportionate share of the cost of government. Equalization may require periodic reappraisals of all parcels within the county, initiated at the discretion of the county commissioners.²⁰

Until recently, Pennsylvania courts had upheld the statutory measure of assessment uniformity using the county’s common level ratio last published by the STEB (see definitions). In so doing, the courts had repeatedly stated that a taxpayer may not successfully raise a uniformity challenge by comparing his or her assessment-to-market-value ratio with assessment-to-market-value ratios of neighboring properties.²¹ Uniformity was only to be determined by applying the STEB ratio to the property’s market value in order to arrive at the correct assessment. On December 27, 2006, the Pennsylvania Supreme Court²² held that courts were *required* to examine evidence of the assessment-to-market-value ratio of comparable properties in determining whether or not uniformity was violated, if such evidence was presented. This case may raise concerns about the constitutional validity of statutory provisions that preclude examination of comparable property²³ in the appeal process.

In order not to violate the uniformity requirement, a property cannot be reassessed for taxation purposes by the **county board of assessment** simply because it is sold. Apart from a countywide reassessment, an individual property can only be reassessed when: (1) the property is subdivided; (2) a physical change has been made to the property such as new construction or removal or change of existing improvements; or (3) the assessment of the property is appealed by **either** the property owner or the taxing district.

The sale of the property cannot lawfully trigger a reassessment by the county board of assessment regardless of the indicated purchase price. This has been deemed “spot” reassessment by the assessment statutes and by case law. A spot assessment based on the sale of the property in question is unconstitutional under

²⁰ *Carino v. Board of Commissioners, Armstrong County*, 79 Pa. Cmwlth. 242, 468 A.2d 1201 (1983).

²¹ *Hromisin v. Board of Assessment Appeals of Luzerne County*, 719 A.2d 815 (Pa. Cmwlth. 1998), *appeal denied*, 558 Pa. 634, 737 A.2d 1227 (1999); *Baechtold v. Monroe County Board of Assessment Appeals*, 804 A.2d 713 (Pa. Cmwlth. 2002).

²² *Downingtown Area School District v. Chester County Board of Assessment Appeals*, 913 A.2d 194 (Pa. 2006).

²³ The assessment to market value ratio of comparable property.

both the federal²⁴ and state²⁵ constitutions. Although the county board of assessment may not reassess an existing property because it has recently been sold, the sale of a property may alert a taxing district, such as a school district, to appeal the assessment based on the sales price. Taxing districts have the same right of appeal as property owners with regard to real property assessments. This right was upheld by the *Commonwealth Court in In re Springfield School District*²⁶ and *Vees v. Carbon County Board of Assessment Appeals*.²⁷

Appeal of an Assessment

The assessment laws afford to the property owner and the taxing districts the opportunity to appeal an assessment to the county board of appeals (and, subsequently, the court of common pleas, if applicable). In an appeal, the burden of proof rests with the party bringing the appeal to produce sufficient, credible, and relevant evidence as to the value of his property once the county board of assessment establishes prima facie validity of its assessment by placing the record into evidence.²⁸ The law stipulates that an appeal does not prevent the collection of taxes upon the assessment.

In any appeal, the board or court is required to determine the following:

- ◆ The market value of the property as of the date such appeal was filed with the board;
- ◆ The common level ratio published by the STEB on or before the first day of July of the year prior to the tax year being appealed to the board.²⁹

After determining the market value of the property, the county board responsible for hearing assessment appeals must then apply the established predetermined ratio to this value unless the common level ratio published by the STEB varies by more than fifteen percent (15 percent) from the established predetermined ratio, in which case the board shall apply that same common level ratio to the market value of the property.³⁰

²⁴ The United States Supreme Court ruled in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 336 (1989), that the practice of placing a new assessment on property which was recently sold, while effecting only minor changes to real estate which has not been sold for a number of years, was a violation of the equal protection clause of the 14th amendment of the United States Constitution. Put differently, “welcome stranger” tax assessment is unconstitutional.

²⁵ To achieve equitable treatment of taxpayers, the courts require that *all* properties within a taxing district be uniformly assessed at a similar ratio of assessed value to market value in order to satisfy Article VIII, Section 1, of the Pennsylvania Constitution. This section stipulates that, “[a]ll taxes must be uniform on the same class of subjects, within the territorial limits of the authority levying the tax . . .” (emphasis added). This provision applies not only to taxes imposed by the Commonwealth, but also to the taxes imposed by local units of government.

²⁶ 879 A.2d 335 (Pa. Cmwlth. 2005).

²⁷ 867 A.2d 742 (Pa. Cmwlth. 2005).

²⁸ *Albarano v. Board of Assessment Revision of Taxes and Appeals*, 90 Pa. Cmwlth. 89, 494 A.2d 47 (1985).

²⁹ 72 P.S. § 5020 511(b) (“The General County Assessment Law,” Section 511(b)); 72 P.S. § 5453.702(b) (“The Fourth to Eighth Class County Assessment Law,” Section 702(b)); 72 P.S. § 5349(d.1) (Third Class County Assessment Board Law, Section 8(d.1)).

³⁰ 72 P.S. § 5020 511(c); 72 P.S. § 5453.702(c); 72 P.S. § 5349(d.2).

Prior to 2004, the assessment laws³¹ contained provisions limiting the amount of real estate tax revenues that could be levied by a political subdivision³² in the year following a countywide reassessment or a change in the predetermined ratio. These provisions are commonly referred to as the “anti-windfall” provisions. The laws required a political subdivision³³ to reduce its millage rate so that the total amount of taxes levied on the properties in the year following a reassessment increased by no more than a specified percentage from the previous year.³⁴

In 2004 and 2005, three bills were signed into law³⁵ which changed the implementation of the anti-windfall procedures by political subdivisions. The assessment laws now require political subdivisions to follow a “two-step” process when increasing real property taxes by a percentage allowed by law following a countywide reassessment. The first step requires a political subdivision to establish a revenue-neutral millage rate.³⁶ The second step is optional. By a *separate vote*, a political subdivision may institute a final tax rate that limits the total amount of taxes levied to no more than the maximum percentage increase permitted by the assessment laws.

In 2006, the Taxpayer Relief Act (Special Session Act 1)³⁷ was enacted. Act 1 contains a new anti-windfall provision which applies school districts. Section 327 directs that after a countywide reassessment,³⁸ a school district which, after July 1, 2006, for the first time levies its real estate taxes on that revised assessment or valuation must reduce its millage rate so that the total amount of taxes levied on the properties subsequent to the reassessment increases “less than or equal to the index for the preceding year.” Section 327 does *not* require the “two-step” process that exists in the current assessment laws.

As a result of the passage of Act 1, two standards now exist for implementing the anti-windfall procedures following a countywide reassessment: one for school districts and one for counties and municipalities.

Until recent years, legal actions attacking the county's total assessment scheme have generally been unsuccessful. Pennsylvania courts held that the various county assessment laws provide taxpayers with a plain, adequate, and complete remedy for their allegations regarding the unconstitutionality of assessments. However, where the lack of uniformity is pervasive throughout a county, the Pennsylvania courts have intervened and mandated countywide reassessments.³⁹ From 1990 to 2005, at least six counties were

³¹ 72 P.S. § 5020 402(b) (“The General County Assessment Law,” Section 402(b)); 72 P.S. § 5453.602(b) (“The Fourth to Eighth Class County Assessment Law,” Section 602(b)); 16 P.S. § 4980.2 (Second Class County Code, Section 1980.2).

³² Political subdivisions include counties.

³³ These provisions do not apply to Philadelphia.

³⁴ The General County Assessment Law limits the increase to 10 percent for both municipalities and school districts. The Fourth to Eighth Class County Assessment Law limits the increase to 5 percent for municipalities and 10 percent for school districts. The Second Class County Code limits the increase to 5 percent for both municipalities and school districts in a second class county.

³⁵ The act of July 15, 2004 (P.L. 746, No. 91); the act of November 16, 2005 (P.L. 382, No. 71); and the act of Dec. 22, 2005 (P.L. 468, No. 91).

³⁶ Excluding newly constructed buildings and structures, as well as improvements made to existing structures.

³⁷ The act of June 27, 2006, Special Session 1 (P.L. 353, No. 1).

³⁸ Includes a change in the county predetermined ratio.

³⁹ 27 Summ. Pa. Jur. 2d Taxation § 15:23 (2005).

ordered by the courts to conduct a countywide reassessment: Erie, Carbon, Allegheny,⁴⁰ Dauphin, Chester, and Lancaster.⁴¹ Court-ordered reassessments have been required due to a combination of factors, such as: (1) the failure by the county to conduct a countywide reassessment for a number of years; (2) the assessment of newly constructed structures at then market value; and (3) an unwillingness of elected officials to remedy the disparities.⁴² The courts have exercised equity jurisdiction in these cases because individual appeals and adjustments would not be sufficient to remedy the inequality.⁴³

⁴⁰ By orders dated April 18, 1997, and May 22, 1997, the Allegheny Court of Common Pleas declared the policy and practice of freezing property tax assessments in Allegheny County to be unlawful and instructed the Board of Assessment to commence the revision and equalization of assessments according to a schedule set forth in the trial court's May 22, 1997 order. See *Miller v. Board of Property Assessment, Appeals and Review*, 703 A.2d 733, 734 (Pa. Cmwlth. 1997).

⁴¹ *Millcreek Township School District v. County of Erie*, 714 A.2d 1095 (Pa. Cmwlth. 1998), *reargument denied*, (July 17, 1998); *Ackerman v. Carbon County*, 703 A.2d 82 (Pa. Cmwlth. 1997), *appeal denied*, 712 A.2d 287 (Pa. 1998); *City of Harrisburg v. Dauphin County Board of Assessment Appeals*, 676 A.2d 736 (Pa. Cmwlth. 1996); *Chester County Board of Assessment Appeals v. Behe*, 158 Pa. Cmwlth. 680, 632 A.2d 1102 (Table) (1993); *City of Lancaster v. County of Lancaster*, 143 Pa. Cmwlth. 476, 599 A.2d 289 (1991), *appeal denied*, 530 Pa. 634, 606 A.2d 903 (Pa. 1992).

⁴² 27 Summ. Pa. Jur. 2d Taxation § 15:12 (2004).

⁴³ *Id.*