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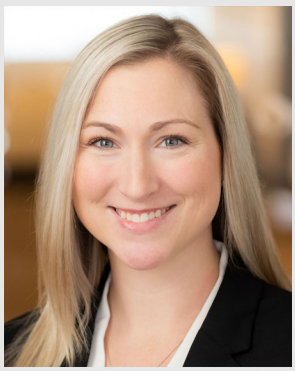

Jennifer W. Karpchuk

Jennifer W. Karpchuk (jennifer.karpchuk@chamberlainlaw.com) is the co-chair of the state and local tax controversy and planning practice at Chamberlain, Hrdlicka, White, Williams & Aughtry in Philadelphia.

In this installment of Pennsylvania's SALT Shaker, Karpchuk examines recent Pennsylvania litigation concerning school districts' use of monetary thresholds to appeal a property's assessed value, which has resulted in disparate treatment of similarly situated properties and raised constitutional issues.

Is it constitutionally permissible for school districts to use monetary thresholds to determine whether to appeal a property's assessed value? The Pennsylvania Supreme Court is primed to answer this question, which could affect many taxpayers throughout the commonwealth.

Uniformity challenges are not new to the state supreme court. In fact, it has addressed the uniformity clause of the Pennsylvania Constitution on a number of occasions over the past few years. Most important for this analysis is *Valley Forge Towers*,[1] in which a school district contracted a local realtor to identify high-value properties for appeal, which resulted in targeting only commercial properties. The taxpayer challenged the school district's singling out of commercial property as a violation of the uniformity clause. The court agreed with the taxpayer, holding that a taxing authority is not permitted to single out one subclassification of properties for appeal; all classes of property must be treated as one for purposes of uniformity. In dicta, the court stated that it was not suggesting that the use of a monetary threshold or some other selection criteria would violate uniformity if implemented without regard to the type of property.

After *Valley Forge Towers*, school districts seemed to embrace the court's dicta — employing varying monetary thresholds to determine which properties to appeal. In *East Stroudsburg Area School District*,[2] a school district appealed properties that would generate an additional $10,000 or more in tax revenue. As applied, the threshold resulted in the appeal of only commercial properties. Yet the Pennsylvania Commonwealth Court upheld the policy. More taxpayers followed suit and were met with similar rejection by the commonwealth court.[3] Meanwhile, the state supreme court refused to grant review.[4]

[1] *Valley Forge Towers Apartments N, LP v. Upper Merion Area School District*, 163 A.3d 962 (Pa. 2017) ("*Valley Forge Towers*").

[2] *East Stroudsburg Area School District v. Meadow Lake Plaza LLC*, No. 371 C.D. 2018 (Pa. Commw. Ct. 2019) op. not reported, *review denied;* and *East Stroudsburg Area School District v. Meadow Lake Plaza LLC*, Dkt. No. 723 MAL 2019 (Pa. S. Ct. 2020).

[3] *See Punxsutawney Area School District v. Broadwing Timber LLC*, 219 A.3d 729 (Pa. Commw. Ct. 2019), *appeal denied*, 234 A.3d 299 (Pa. 2020); *Bethlehem Area School District v. Board of Revenue Appeals of Northampton County*, 225 A.3d 212 (Pa. Commw. Ct. 2020), *appeal denied*, 237 A.3d 968 (Pa. 2020) (school district targeted properties that were likely to generate at least $10,000 in potential tax revenue).

[4] *Compare, Colonial School District v. Montgomery County Board of Assessment Appeals*, No. 530 C.D. 2019 (Pa. Commw. Ct. 2020), wherein the commonwealth court held that the trial court erred in concluding that a school district's decision to appeal the valuation of a mall as part of an alleged practice of appealing properties undervalued by more than $500,000 did not violate uniformity, reasoning that the trial court relied on factual findings that were not supported by substantial evidence.

Finally, the state supreme court granted review in *Autozone*.[5] In this case, the school district employed an appraiser to determine which properties were underassessed. The appraiser, who was asked not to limit his review to a particular class of properties, ultimately identified for appeal 13 properties that he believed were underassessed by at least $1 million. All 13 were commercial properties, which — given the high monetary threshold — is not surprising. The taxpayer contended that the school district's policy violated the uniformity clause. On appeal, the commonwealth court found that because the school district's actions did not systematically target commercial properties, but instead focused on those that were worth the cost and expense of an appeal, there was no uniformity clause violation. Practitioners who were eagerly awaiting a decision in *Autozone* on the monetary threshold issue were sorely disappointed when the high court later dismissed the case as improvidently granted in late 2021.[6]

Nevertheless, hope was restored in February when the state supreme court granted review in a similar case, *Berkshire*,[7] in which the school district adopted a policy of appealing recently sold properties that were potentially underassessed by at least $150,000. The court agreed to review two issues raised in *Berkshire*:

- whether the school district's selective real estate tax assessment appeals violate the uniformity clause when the district chooses only recently sold properties for appeal, leaving most properties in the district at outdated base-year values; and
- whether the district's selective real estate tax assessment appeals violate the uniformity clause when the district chooses only recently sold properties that would generate a minimum amount of additional tax revenue for appeal, leaving most properties in the district at outdated base-year values.

The U.S. Supreme Court has been asked to review the first issue in the past. In *Allegheny Pittsburgh Coal*,[8] the Court held that a policy of targeting recently sold properties ("welcome stranger") was an unconstitutional violation of the equal protection clause of the U.S. Constitution. Although the state supreme court did not grant review of the equal protection issue, equal protection and uniformity are inextricably interwoven. The court has explained that "federal equal protection jurisprudence . . . sets the floor for Pennsylvania's uniformity assessment."[9] Thus, a tax that violates the equal protection clause necessarily violates the uniformity clause. In light of *Allegheny Pittsburgh Coal*, the school district's welcome stranger policy seems constitutionally suspect.

The second issue the court will address in *Berkshire* deals with welcome stranger coupled with a monetary threshold. While the commonwealth court has upheld monetary thresholds, they appear problematic. In several cases, the thresholds were so high that only commercial properties were appealed. The commonwealth court has consistently upheld school districts' monetary thresholds, reasoning that the district's policy is not systematically targeting commercial properties, but rather focusing on properties that are worth the cost and expense of an appeal. Yet as these cases show, properties that potentially generate enough in additional tax revenue to make them worth the cost of an appeal are higher-valued properties — which tend to be commercial properties.

Does the commonwealth court's analysis run counter to the spirit of the uniformity clause and the state supreme court's case law? In *Valley Forge Towers*, the court recognized that "where there is a conflict between maximizing revenue and ensuring that the taxing system is implemented in a non-discriminatory way, the

[5] *Kennett Consolidated School District v. Chester County Board of Assessment Appeals, Appeal of Property Owner Autozone Development Corp.*, 228 A.3d 29 (Pa. Commw. Ct. 2020).

[6] At oral argument, some justices seemed to indicate that they did not believe the record was properly developed below.

[7] *GM Berkshire Hills LLC v. Berks County Board of Assessment Appeals*, 16 MAP 2022.

[8] *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County*, 488 U.S. 336 (1989).

[9] *Downingtown Area School District v. Chester County Board of Assessment Appeals*, 590 Pa. 459, 913 A.2d 194, 200 (2006).

uniformity clause requires that the latter goal be given primacy."[10] Monetary thresholds effectively allow school districts to subvert the supreme court's *Valley Forge Towers* holding under the guise of equal treatment, regardless of property classification. Thus, monetary thresholds allow school districts to do indirectly that which they are not constitutionally permitted to do directly. The result is constitutionally suspect at best.

Moreover, considering that school districts use various thresholds throughout the commonwealth, monetary thresholds are problematic. As a result, property within the same county can be appealed disparately depending on the various school districts' policies throughout the county. The properties involved in *Berkshire* are in Berks County, which has 18 school districts and approximately 60 municipalities. The state supreme court has held that — for a uniformity analysis — all real estate within a county is the same class.[11] Thus, when county school districts use various monetary thresholds, members of the same class are treated differently simply because of the use of different arbitrary thresholds.

For instance, assume the not-uncommon situation of two identical houses on the same street in the same county. In the same neighborhood, Ann's property falls within School District A, and Bob's property falls within School District B. School District A's threshold for appeals is a potential underassessment of $150,000. School District B's threshold for appeals is a potential underassessment of $500,000. Both school districts believe the properties are underassessed by $150,000, but only Ann's property in School District A is appealed. The monetary thresholds result in a situation in which identical properties within the same county and same neighborhood are treated differently simply because of different monetary thresholds set by the school districts. This strikes at the heart of uniformity.

Several cases are in the pipeline challenging various monetary thresholds used by school districts across the commonwealth to target properties for appeal. Taxpayers and school districts alike will be keeping a close eye on the court's decision in *Berkshire*. ■

[10] *Valley Forge Towers*, 163 A.3d at 980.

[11] *Deitch Co. v. Board of Property Assessment, Appeals & Review of Allegheny County*, 209 A.2d 397, 401 (Pa. 1965).