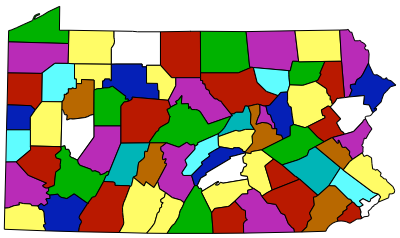

Pennsylvania Tax Reports

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SELECTIVE TAX APPEALS PERMITTED

In a divided opinion en banc, the Commonwealth Court held that taxpayers who alleged that a reassessment of their property upon its sale was made pursuant to a school district's selective pattern of tax appeals failed to claim a constitutional violation. *Vees v. Carbon County Board of Assessment Appeals,* No. 2433 C.D. 2003 (Pa. Commw. Feb. 8, 2005). The case appears to be incorrectly decided.

In a countywide reassessment in 2001, the property was assigned a fair market value of $92,250. The taxpayers purchased the property a year later for $170,000. That same year, the school district appealed the assessment, claiming a value of $170,000. The board increased the value to $161,900, and the trial court reached the same figure. At trial, the taxpayers offered to prove that the school district had a policy of taking a tax assessment appeal where the purchase price exceeded the current assessed value by $15,000, with the intention of correcting what it perceived as economic valuation problems within its jurisdiction. The trial court excluded the evidence on the grounds of relevance.

The Commonwealth Court's assertion that the taxpayers did not allege or prove a constitutional violation seems incorrect. The opinion quotes the taxpayers as claiming that "the assessment violated the requirement of uniformity and the same is discriminatory, and the assessment violates due process and equal protection of laws." More specifically, the taxpayers claimed that their property was spot assessed. Spot assessment in origin is a constitutional doctrine. Notwithstanding that the majority opinion repeated nine times that the taxpayers failed to allege or prove the unconstitutionality of any statutory provision, it seems obvious that they alleged an unconstitutional practice.

Furthermore, the Commonwealth Court placed the taxpayers in an impossible Catch-22 evidentiary situation. The taxpayers claimed in essence that the school board pursued a policy of appealing the assessments of what they viewed as "big ticket" sales in excess of their assessed value with the intention of achieving the reassessment of a number of taxables within their district, and that, in acceeding to those requests, the assessment board produced a pattern of nonuniform assessments, to the particular disadvantage of the taxpayers. Yet when the taxpayers offered proof of the pattern and intention of discrimination, the proof was turned away as irrelevant. Indeed, the Commonwealth Court commented that "the trial court could properly conclude the danger of confusion outweighed the probative value of the proffered evidence."

 For further discussion of Pa tax issues, the reader is referred to *J. Bright, Taxation*, 26-27 *Summary of Pa. Jurisprudence 2d* (West Group)

Since real estate tax appeals are non jury trials, tried to a judge, who is it that would be confused by the admission of evidence already outlined to the trial court?

The dissenting opinion by Judge Rochelle S. Friedman for two judges pointed out the different statutory standards required to be applied when a board assesses property as opposed to the resolution of a tax appeal. It is not clear whether the taxpayers claimed that the different standards were unconstitutional per se, but it is certainly clear that they claimed that the practice was unconstitutional and injured them. While the dissenting judges believed that the disparity in the statutory standards raised state constitutional question, the dissenters added the obvious point that the taxpayers expressly raised the question whether the application of the standards worked an unconstitutional result as to them. In the dissenters' view, the constitutional claim should have been heard.

The majority faulted the taxpayers for failing to present evidence of the value of comparable properties. However, it is not clear that the taxpayers should bear that burden in the first instance. A spot assessment is defined in one of the assessment acts as a reassessment not conducted as part of a countywide revised assessment which creates, sustains or increases disproportionality among assessed values. 72 B.S.§ 5342.1 An assessment upon the sale of a property seems prima facia to meet the definition. It should then be the board's obligation to show that the assessment did not create, sustain or increase the disproportionality. In any event, as the dissenters pointed out, a comparison of the state-calculated common level ratio to the county predetermined ratio (both of which are applied to market value to reach assessed value) showed that properties in the county generally were assessed at values with ratios of assessed to market value lower than the county's predetermined ratio. That statistic appears to prove a county-wide lack of uniformity.

The practical effect of the decision appears to permit the assumption of de facto control of the assessment of properties by a taxing jurisdiction, with an inevitable pattern of unconstitutional, non-uniform assessments. An assessment board is the governmental body charged with the responsibility of assessing all properties in the county. If a school district is permitted to take selective appeals on a few properties when they are sold, and the assessment board acquiesces in the requests for reassessment, the result will be a pattern of reassessment on sales. That is exactly what the rule against spot assessments is intended to prevent. Indeed, the effect will be worse, because the territory of a school district will be less than the county, resulting in a distorted pattern not only within the school district of reassessments upon sale but a distortion when compared to all other properties in the county. The majority argued that a school district appeal is not a reassessment, but the observation ducks the issue. It is the consequent reassessments by the board that establish the non-uniform pattern. The taxpayers in *Vees* appear fairly to have raised that question, and their claim should have been heard.