

Delaware's Property Tax Reassessment



Three things commercial property owners should know

BY DONALD N. ISKEN AND KATHERINE H. BETTERLY

DELAWARE IS AMONG THE FEW STATES that does not have a constitutional or statutory requirement to periodically adjust property values for purposes of real estate taxation. As a result, the last county-wide property tax reassessment took place in New Castle County effective 1983, Kent County effective 1987, and Sussex County effective 1974. As would be expected, the intervening decades have witnessed widely divergent rates of appreciation in market value amongst the hundreds of thousands of properties located throughout the state.

According to civil rights activists and public education advocates, this has created unequal treatment of properties and inequities in the way public schools are funded. These circumstances were brought before the Delaware Court of Chancery in 2018, in the highly publicized lawsuit, *In re Delaware Public Schools Litigation*, C.A. No. 2018-0029-JTL (Country Track), 2020 WL 2296888 (Del Ch. May 8, 2020).

In 2020, the Court of Chancery issued a landmark ruling, holding that Delaware's property tax system violated the Delaware Constitution, which requires all property owners to be taxed on an equal footing. The Court also ruled that Delaware statutory law had been violated, as it requires all property subject to taxation to be assessed at its "true value in money" (a concept similar to "fair market value").

1. Status of Reassessments

While the Court declared the existing property tax system unconstitutional, it did not go so far as to offer a workable solution. In the wake of that decision, the litigation parties agreed to a settlement that required each County to undertake a reassessment of its tax parcels. All three counties are expected to complete such work around fiscal year 2025.

While such countywide reassessments are intended to be revenue neutral, certain caveats under state law might lead to a tax revenue increase, although for counties only temporarily. Following a reassessment, school districts must calculate a new tax rate and realize up to a 10 percent increase in revenue over the fiscal year immediately preceding the reassessment. Counties can increase their tax rates in order to increase overall tax revenues by up to 15 percent but only for the year immediately following the reassessment. Presumably, the purpose of this temporary tax revenue increase was intended to defray the cost of the reassessment; however, counties officials have stated New Castle and Sussex counties intend to keep the reassessment revenue neutral by paying for the current reassessment out of reserves while Kent County plans to seek a temporary increase in tax revenue.

2. Considerations Involved in Establishing “Fair Market Value”

Because most commercial properties are unique, many subjective elements are involved in establishing the fair market value of a commercial property. In addition, assessing commercial properties often considers income derived from those properties which can vary widely from year to year and may imbue a sense of “valuation roulette” in the tax reassessment process. During the COVID-19 pandemic, some properties saw a dramatic income decline, while other properties were income stable or experienced a net income increase; however, these income figures could be anomalies that revert to historical norms once the pandemic is firmly in the rearview mirror. Given these factors, commercial property owners should view with skepticism whether a state-wide reassessment performed in an environment of unprecedented external influence can genuinely result in an accurate determination of their properties’ fair market value.

3. Mechanisms for Reassessments and Appeals

Consulting group Tyler Technologies is handling reassessments for all three counties. The company stated that it will invite property owners to provide feedback through an informal review process. That process is still developing, and it remains to be seen how a property owner’s feedback will be considered or impact the final reassessed value.

In the event of an overstatement in assessed value, property owners have other forms of redress available—such as the property tax appeal. When the last general reassessment in New Castle County was performed, a flood of property tax appeals were filed in the years following. We anticipate another increase in appeals following this reassessment.

Property owners should beware—each county has its own appeal process. If appeals are not filed in a timely manner, owners will be estopped from appealing that year’s property taxes.

The timing of when property owners will have their new reassessed values versus how much time they will have to prepare and file a commercial property tax appeal remains an open question. Concerned property owners should remain alert to developments in this area—especially given the consequences of failing to meet filing deadlines. ■

These materials have been prepared solely for informational and educational purposes, do not create an attorney-client relationship with the author(s) or Morris, Nichols, Arsht & Tunnell LLP, and should not be used as a substitute for legal counseling in specific situations. These materials reflect only the personal views of the author(s) and are not necessarily the views of Morris, Nichols, Arsht & Tunnell LLP or its clients.



Donald N. Isken is a retired partner, and **Katherine H. Betterly** is a current partner at Delaware law firm Morris, Nichols, Arsht & Tunnell LLP. Kate can be reached at kbetterly@morrisnichols.com.



WOHLSEN

CONSTRUCTION

WohlsenConstruction.com

