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**Supreme Court Tosses Out Allegheny County's Base Year Assessments**

“... We hold that the base year method property valuation, as applied in Allegheny County, violates the Uniformity Clause. We therefore agree that a countywide reassessment is required and remand this matter to the trial court for implementation of that mandate consistent with this Opinion.” So said the Pennsylvania Supreme Court in a unanimous decision on April 29, 2009.

Thus it is Judge Wettick, who ruled against the County's base year in July 2007, who will decide how to implement the Supreme Court's decision. Bear in mind that Judge Wettick had earlier ordered the County to fix the problems in the 2005 assessments—which the chief assessor had determined already met international assessment standards—and use them for 2006. The County demurred, rejecting the Judge's order and instead adopted the base year system using 2002 assessments as the base year values. These values had been maligned as terribly inaccurate by the Chief Executive when he was campaigning for office.

In response to the unambiguously worded Supreme Court ruling, the Executive is saying he is not sure there will be a reassessment and the County is weighing its options. It remains to be seen whether Judge Wettick will permit any weighing of options other than the one he orders.

And while the Court has ruled unambiguously about what must happen in Allegheny County, their opinion does not resolve satisfactorily what must happen in other counties using the base year system. Here's the problem. The Court ruled that the concept of using a base year system to assess property is not in itself inherently unconstitutional until the unrevised base year begins to create serious inequities in taxation. In essence, whether the base year system violates the Uniformity Clause is to be determined on a case by case basis. For Allegheny County their judgment is clear, for the rest of the state, murkiness and confusion.

The Court shot down the County's argument that a base year satisfied “the need to create and preserve a stable and predictable local real estate tax system”. The predictability, argued the County, of using a base year would eliminate the cost of reassessments and the “substantial repercussions” of such reassessments. In addition to avoiding the cost and the fallout, the County felt that “the interest in stability and predictability outweighed the

interest in keeping up with the latest changes and fluctuations in market values”. The County also felt that there was not that many instances of widespread inequality and that, on the whole, its assessments were better than other counties.

The Court wholeheartedly disagreed, noting that although state assessment laws permit the use of a base year that is indefinite in nature, “those provisions, as applied [in Allegheny County] violate the Uniformity Clause”. In other words, the County’s search for predictability in the assessment system did not outweigh the need to satisfy the need for uniformity in taxation.

The Court summed up its arguments with this: “the County’s reasons why its base year system’s resulting non-uniformity should be tolerated—stability and predictability—cannot justify a taxing scheme that routinely taxes property owners with declining or stagnant property values at a higher rate of assessed-to-actual value than property owners with stable or appreciating property values”.

What does this mean for other counties in Pennsylvania using a base year? The Court’s decision leaves a lot of unanswered questions. It could be interpreted as a county using a base year may have some serious uniformity issues if it has been in place for a while. The failure of the Court to delineate further prompted Judge Baer to issue a concurring opinion pointing out the need to get clarification for the other counties.

In that concurring opinion, Judge Baer writes, “Absent the unlikely prospect of prompt legislative action, the Majority’s decision not to offer substantive criteria for interpretation of the Uniformity Clause will result in ongoing uncertainty for the Commonwealth’s many taxing authorities and property owners alike”. The Majority opinion held that it is hard, if not impossible, to tell when a base year begins to violate the Uniformity Clause. At that point, the Court did what can best be described as a “punt” and gave the assessment ball to the General Assembly. They did point out that 22 states require annual reassessments while 26 others require periodic reassessment (*see our 2007 report on assessments*) so it is clear that Pennsylvania is out of step and the Court may have been nudging the Legislature to see that fact.

The Majority basically weighed the high probability of throwing the state into property tax chaos if it declared the base year unconstitutional against the equally strong likelihood of lawsuits by taxpayers who will cite the language in the Allegheny County ruling. They chose the latter. Judge Baer suggests using the statistic called “Coefficient of Dispersion” (COD), a measure of the error rates in assessed values, as a benchmark. He argues that “To permit counties and taxpayers alike to have guidance as to when such mutation from a constitutional to unconstitutional system is occurring, this Court should adopt [the COD]”.

How would this work? If a county’s COD reached 20 or more—a figure that is verified by the State Tax Equalization Board—it would then be inferred that the county’s assessment has moved to the level of being non-uniform and would face two choices:

reassess, or be ready to face lawsuits. The latest STEB data shows that 59 counties, including Allegheny, have a COD of 20 or greater.

Perhaps a better approach would be to have the Legislature amend the base year statute to require that a given base year cannot be in place indefinitely. The new language could require that a reassessment take place and new base year be established at least every five years. The amended language could allow three years to carry out the first reassessments for those counties with the highest CODs with others out of the acceptable range to follow in two more years.

As it now stands, there is no clear cut guidance as to which branch of state government should deal with the remaining problems. Someone needs to act before the court system is overwhelmed with lawsuits.

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**Jake Haulk, Ph.D., President**

**Eric Montarti, Senior Policy Analyst**

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<p>Allegheny Institute for Public Policy 305 Mt. Lebanon Blvd. * Suite 208* Pittsburgh PA 15234 Phone (412) 440-0079 * Fax (412) 440-0085 E-mail: <a href="mailto:aipp@alleghenyinstitute.org">aipp@alleghenyinstitute.org</a></p>
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