

## The Latest Developments in Allegheny County's Anticipated 2012 Countywide Re-Assessment: County Council Asks the Pennsylvania Supreme Court for a Stay

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On December 10, 2009, Allegheny County Court of Common Pleas Judge R. Stanton Wettick, Jr. entered an order requiring Allegheny County to conduct a countywide re-assessment for use in 2012, and establishing a schedule for its completion. This order followed the Pennsylvania Supreme Court's April 29, 2009 decision in *Clifton, et al. v. Allegheny County*, in which the Supreme Court held that the county's application of the base-year system resulted in such disparate treatment of the county's taxpayers as to violate the Uniformity Clause of the Pennsylvania Constitution.

Despite the passage of more than 16 months since the entry of Judge Wettick's order, it is uncertain whether Allegheny County will complete its re-assessment of the more than 500,000 properties in the county in time for use in 2012.

In the latest turn of events, on March 7, 2011, Allegheny County Council filed a petition with the Pennsylvania Supreme Court requesting that it either exercise extraordinary jurisdiction, or exercise its King's Bench powers, to stay Judge Wettick's December 10, 2009 order. Both of these bases for asserting jurisdiction over a controversy are to be exercised only in matters of immediate public importance and are not commonly exercised.

County Council contends that they should be exercised here, and that a stay is warranted, so that the Supreme Court can consider whether to establish an objective test for measuring whether all Pennsylvania counties are in compliance with the Uniformity Clause. Allegheny County officials have expressed concern that the court-ordered reassessment will have a chilling effect on development and growth in the county, particularly when no such countywide re-assessment is being required of the surrounding counties, and particularly when almost all of

them are statistically less uniform than Allegheny County. They argue that businesses will choose to invest outside Allegheny County because they perceive that property taxes are less predictable year-to-year - and more costly - in Allegheny County than in the surrounding counties. County Council contends in its petition that the establishment of a uniform and objective test for evaluating the uniformity of taxation in each county will help level the playing field among Pennsylvania's counties, and that it would also curb the need to engage in costly litigation to determine whether a county's tax assessment scheme does not meet constitutional muster.

County Council contends that use of statistical data published annually by the Pennsylvania State Equalization Board for each county, known as the coefficient of dispersion ("COD"), is widely acknowledged as a reliable measure of the uniformity of an assessment scheme. In its petition, County Council notes that in the *Clifton* opinion, the Supreme Court not only acknowledged that the COD was a useful tool for evaluating the uniformity of an assessment scheme, but that it also relied upon Allegheny County's COD to conclude that the base-year system was unconstitutional as applied in the county.

The issue of whether the court should establish such a test was a subject of some discussion in *Clifton* opinion. One Supreme Court Justice contended in a concurring opinion in the *Clifton* decision that the court should establish a bright-line test for determining whether each county's assessment scheme was sufficiently uniform through use of the county's COD. The majority of the court ultimately concluded that it was preferable for the General Assembly to address the issue. However - and as County Council stresses in its petition - the *Clifton* court stated that it might reconsider whether to establish such a test in a future case "where a party actually requests and argues for such relief and where the General Assembly's failure to respond to the [*Clifton*] decision has become apparent." Perhaps the Supreme Court will find that the passage of nearly two years without a response from the legislative branch is a compelling reason for the court to establish such a test.

Whether the Supreme Court should do so in this proceeding through the exercise of its extraordinary or King's Bench jurisdiction is another matter. The respondent taxpayers have filed responses to County Council's petition in which they note that extraordinary and King's Bench jurisdiction is to be exercised sparingly. The respondents also contend that County Council simply has not demonstrated either the immediacy or the public importance that warrant



exercising extraordinary or King's Bench jurisdiction, or a stay of Judge Wettick's order. They note that this maneuver is the latest in a series of attempts by the county to derail, or at least delay, the countywide re-assessment that must occur in order to cure the unconstitutional application of the base-year tax assessment scheme in Allegheny County.

While the petition is pending before the Supreme Court, Allegheny County continues to move forward with the countywide re-assessment. Currently, the county plans to issue assessment notices beginning in August, and will hold informal appeals throughout the balance of 2011 to correct errors in the county's records. Taxpayers will then be afforded an opportunity to initiate formal 2012 tax assessment appeals.

We will continue to closely monitor events relating to the anticipated countywide re-assessment as the 2012 deadline for the court ordered re-assessment draws near.

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