



Testimony of Daniel A. Miscavige
Presented to the
Pennsylvania Senate Finance Committee
Wednesday, May 7, 2008
Harrisburg, Pennsylvania

Introduction:

Good Morning, I am Daniel A. Miscavige, a partner in the Law Firm of Gillespie, Miscavige, Ferdinand & Baranko, LLC in Hazleton, Pennsylvania where I represent school entities including the Weatherly Area School District in various matters. I also represent the Carbon County Tax Assessment and Tax Claim Bureaus since 1991. I have been involved real estate property assessment appeal cases for over 18 years.

As part of this experience, I had represented the Carbon County Board of Assessment Appeals in the seminal assessment appeal case of Vees vs. Carbon County Board of Assessment Appeals, 867 A.2d 742 (Cmwth. Court 2005). I would also note that Carbon County has had the experience of a county wide reassessment effective 2001. Carbon County has, since that time experienced a significant and consistent level of assessment appeals continuing the present time.

To understand the potential impact of Senate Bills 1247 and 1258 on School Districts, it is necessary for me to review the present structure of establishing and challenging property tax appeals and also to review the Vees case and its importance to School Districts and local Municipalities alike.

The Vees case established and confirms the following principles involving assessment appeals both by an individual and, more particularly by taxing authorities under Section 706 of the Fourth to Eighth Class Assessment Law which would be amended by Senate Bill 1247.

A. The Court confirmed that a School District appeal of assessment of fair market value does not violate the uniformity clause of the Pennsylvania and United States Constitutions.

B. The Court confirmed that a successful appeal of the School District which resulted in an increase in property assessed value did not have an unconstitutional effect.

C. The Court confirmed that any School District aggrieved by any property assessment has the right to appeal such assessment in the same manner to the same effect as if appeal was processed by an individual taxpayer.

Present & Statutory Scheme – Assessment Appeals

As background to the present statutory scheme, we know, in any type of taxation, both the Legislature, in enacting such legislation, and, the taxing authorities, in implementing the legislation seek a uniform application of the tax.

Specifically, such uniformity is required both by the United States Constitution in the Fifth and Fourteenth Amendments and the Pennsylvania Constitution in Article VIII, Section 1.

Such uniformity is also required by the specific tax enabling legislation.

In the present case, we are dealing generally with the General County Assessment Law 72 P.S. 5020.101 et.seq. and the Fourth and Eighth Class County Assessment Law 72 P.S. 5453.101.

The issue of uniformity arises frequently in real estate tax assessment appeals.

Section 602 of the Fourth to Eighth Class County Assessment Law requires County Assessors to establish the Fair Market Value of property either in the base year or current year.

Sub-section (a) in determining the fair market value confirms that one (1) method is to utilize the price at which a property is sold either in the base year or in the current taxable year but that such sale price shall not be controlling. Similarly, in every appeal whether to the Board of Assessment under Section 702, or to the Court of Common Pleas under Section 704, determination must be made of fair market value as to the date of the appeal. Once the fair market value is determined the Board or the Court must then apply the established pre-determined ratio or the common level ratio to establish the actual assessment of the property.

Authorization of Taxing Authority – Assessment Appeals

Section 706 of the Fourth to Eighth Class County Assessment Law was enacted by the legislator in 1943 and provides that any County, Boro, Town, Township or School District has a right to appeal in the same manner subject to the same procedure and with like effect as if the appeal was taken by the taxable. On its face what can be more equitable than an individual taxpayer and the Taxing Authority each having the right to

challenge an assessment on a taxable parcel in the same manner subject to the same procedure and with like effect.

Senate Bill 1247 seeks to modify Section 706 by limiting such appeals to those circumstances enumerated in the proposed legislation.

Pennsylvania Courts have continually and uniformly confirmed the standing of taxing authorities to pursue such appeals see Millcreek Township School District vs. Erie County Board of Assessment Appeals, 737 A.2d 335 (Pa. Cmwlth. 1999) and Vees vs. Carbon County Board of Assessment Appeals, 867 A.2d 742 (Pa. Comwlth. 2005).

The question presented is: does this statutory and attendant standing to appeal an assessment of real property impact the constitutional mandate of uniformity of taxation. The Court in Vees, Supra. held, as a matter of law that the School District's use of this statutory appeal mechanism does not amount to deliberate or purposeful discrimination.

Principle of Uniformity in Taxation

The basic principal of uniform taxation is that any taxpayer should pay no more or no less than his proportionate share of the cost of government. Dietch Company vs. Board of Property Assessment Appeals of Allegheny County, 417 Pa. 213 209 A.2d 397 (1965).

All will acknowledge that the current system of real estate taxation and statutorily required valuation and assessment of such property is imperfect.

Under the Fourth to Eighth Class County Assessment Law the County Assessor is charged with establishing the assessed value of an individual property on base year values.

After the base year, some years will see an increase in property values and some years will see a decrease in property values. Under the current assessment law, the County

Assessor may not change individual assessments unless one (1) of the enumerated, triggering charges in a property occur or in the event of clerical error. 72 P.S. Section 5453.602(a), 72 P.S. Section 5453.703(c).

Since the County Assessor has no power to change, and in consideration of the fact that property values are consistently changing each year, how is the goal of uniformity to be maintained short of county wide reassessments of property? As a practical matter I can advise that since the general countywide reassessment of property in Carbon County effective 2001, in the initial two (2) years following such reassessment most appeals to the Board of Assessment were filed by individuals to correct perceived and real errors in the fair market value from the countywide reassessment.

The next three (3) to four (4) years, most appeals were filed by the Taxing Authorities.

In the last two (2) years, Carbon County has determined appeals by individuals and taxing authorities are approximately equal.

Again, it is important that the methodology for selecting properties be presented to the Committee since it is not a random, or discriminatory process by which the School Districts pursue appeals of individual properties.

In Carbon County currently four (4) of the five (5) school districts pursue assessment appeals to the Board of Assessment. Palmerton Area School District previously pursued such appeals until approximately 2004 and has not chosen to do so since that time.^[1]

^[1] Information supplied by Stephen Serfass, Esquire, Solicitor for Palmerton Area School District.

The Districts which do currently pursue such appeals do so with the purpose to ensure that all property owners pay their fair share of real estate taxes within the Taxing District.

The School Districts do not file an appeal on every property, only those where there is an actual, statistical abnormality.

In determining whether such abnormality exists the School District utilizes the common level ratio established by the State Tax Equalization Board.

An example of how a property may be reviewed for possible appeal would be as follows:

Property Value Base Year	Pre-determined Value	Base Year Assessment	Current CLR – Year Appeal Assessment
\$60,000.00	50%	\$30,000.00	\$20,000.00
Property Sales Price			
\$100,000.00	50%	\$50,000.00	\$33,000.00

In such case the Taxing Districts would not be filing an Appeal based on the sale price of this particular property since the four (4) Districts currently taking appeals usually require a variance of \$15,000.00 to \$20,000.00 in assessed value^[2] (reflecting, under current common level ratio \$45,000.00 to \$60,000.00 fair market value) before an Appeal is filed.

It is also important to note that the current assessment law requires, once there is a

^[2] Information supplied by Robert Yurchak, Esquire, Solicitor for Panther Valley School District and William G. Schwab, Esquire – Solicitor for Lehigh Area School District and counsel to Jim Thorpe Area School District and Weatherly Area School District on assessment issues.

deviation of more than seven and one-half (7 ½%) percent either way from the pre-determined ratio and the current common level ratio as established by the State Tax Equalization Board, that both the Board of Assessment and the Court on appeals must utilize the common level ratio. This effectively takes the current fair market value back to base year evaluation so current appeals are thereby being reviewed under the base year valuation, the same as other, comparable properties.

Subject property current year appeal	Assessment CLR	Comparable Assessment 2001	CLR – Current Fair Market Value
		vs.	
\$100,000 sales price (current fair market value)	\$33,000.00	\$33,000.00	\$100,000.00

As indicated in 2003 there was an initial increase in School District Appeals. In which approximately fifteen (15%) percent of all properties subject to real estate transfers (including residential, commercial, industrial and vacant land) were appealed by the School Districts. One reason is that market values were trending upward at that time reflecting an increase in fair market value of property over base year values.

Since 2003, the percentage of appeals have trended downward from fifteen (15%) percent to twelve (12%) percent to approximately ten (10%) percent in the current year.^[3]

² Information supplied by Robert Yurchak, Esquire, Solicitor for Panther Valley School District and William G. Schwab, Esquire – Solicitor for Lehighon Area School District and counsel to Jim Thorpe Area School District and Weatherly Area School District on assessment issues.

As indicated in 2006 and 2007 appeals filed in Carbon County were approximately equal in filing by individuals and taxing authorities.

The question would be why the District appeals are trending downward. I would submit there are two (2) factors.

1. Market values have been decreasing so there is not a greater variation in the current fair market value verses base year valuations.

2. Uniformity being stabilized over the seven (7) years since the countywide reassessment by a combination of appeals by individuals and taxing authorities.

The demonstrated result of the current statutory scheme of placing individual taxpayers and taxing authorities in the same position to challenge assessments on individual properties is that the property owner of any individual property in the Taxing District would pay only his or her fair share in the taxing scheme of the tax imposed by the authority and also their fair share as to other taxpayers in the Taxing Districts.

If the option of appeals by the Taxing Authorities was removed the County would have no authority to correct any perceived or actual non-uniformity but for countywide reassessment. There would be no question that the inevitable result of restricting such appeals is an increased discrepancy among taxables, the opposite of the constitutionally mandated and desired uniformity. Further, other tax payers must subsidize the people whose properties of a much higher fair market value which value would not be reflected in the real estate tax assessment.

Further, the Taxing District does not realize the intended tax revenue and therefore must increase the rate of taxation further imposing a disproportionate burden on the taxpayers of the District.

Effects of Proposed Senate Bills 1247 and 1258

The proponents of Senate Bill 1247 and 1258 advocate the proposed legislation will halt perceived discrimination versus property taxpayers and what they contend are “spot reassessments”.

For the reason stated earlier, I would respectfully submit the actual experience and numbers in the County belie the assertion that appeals permitted pursuant to Section 706 result in discrimination of taxpayers but rather promote and advance constitutionally mandated and desired uniformity of taxation within the current system.

Further, the assertion that permitting appeals by the Taxing Authorities are “spot reassessment” likewise, is simply and flatly untrue.

As stated earlier, the Pennsylvania Courts have uniformly recognized the right of such appeals (see Millcreek Supra and Veas Supra.) as stated succinctly by Carbon County President Judge Nanovic in his Decision in Veas:

“There is little question that the Board itself is prevented from engaging in piece meal reassessment of individual properties based solely upon recent sales figures.”

Judge Nanovic went onto respond to the property owner’s contention that such Appeals by the School District resulted in spot reassessment:

“The direct answer to the owner’s argument is simple: the School District is not the Board”.

The Commonwealth Court has affirmed this Decision that the School District is availing itself of a statutory remedy and is not spot reassessment.

Again, I would respectfully submit that if Section 706 is amended, as proposed to curtail the appeal rights of taxing authorities within current statutory scheme of assessment of property for real estate taxes there can be no result other than increased discrepancy in assessment values of properties, therefore increasing the lack of uniformity; increasing the disproportionate tax burden on the other taxpayers of a Taxing District; with the only remedy being countywide reassessment of taxes.

History has demonstrated that Counties are not quick to acknowledge such lack of uniformity and move to pursue countywide reassessment without Court order to do so. We have seen this trend result in an increased litigation of this nature in the 1990's including actions filed in Dauphin County, Berks County and Carbon County.

There are several lessons that can be learned from certain Counties and action on countywide reassessment.

1. The longer a countywide reassessment is delayed, the more difficult it will be. A regular review of assessments create far fewer shifts in taxes than a reassessment after thirty (30) years.

2. Taxpayers need to have confidence in the assessed values and the process used to derive them. This means insuring that reassessment is performed properly and undertaken by a component and reputable firm. Taxing Authorities, including School Districts can play an integral role in this process as they have a substantial interest in the correctness of property tax valuation under our current, albeit imperfect, statutory

scheme. Property tax revenue, despite its vilification in recent years, is the oxygen that districts must have to provide student educational programs.

3. Delays in reassessment distort economic behavior including decisions about where to live and work. It is relevant to individual decisions in undertaking improvements to one's property.

In addition to the Court cases cited herein, a more recent case of Clifton et.al. vs. Allegheny County, CD No. GD05-028638, June 6, 2007, Judge Wittick of Allegheny County detailed the problems of the Commonwealth's property assessment system. He held that provisions of the County Assessment Law which will allow a County to arrive at actual value by using a base year market value violate Pennsylvania Uniformity Clause. This case is now pending before the Pennsylvania Supreme Court.

Conclusion

I urge you not to undertake assessment legislation that undermines School District Authority but defer legislative action only after the rendering of the Pennsylvania Supreme Court's Decision in Clifton, Supra. I would respectfully suggest you first determine if the Supreme Court provides additional guidance on mandated or desired amendments to the current assessment law to further the ultimate goal of uniformity of real estate tax assessments in the Commonwealth.

Anything else is premature at best.

Thank you and I will take any questions that you may have.