

A fresh look at the constitutionality of Pennsylvania's property tax law

By Sharon F. DiPaolo

Pennsylvania's property tax system ranks dead last with a grade of "F" – tied with Mississippi – in the most recent 50-state comprehensive benchmark study by the Council on State Taxation (COST), prepared every five years. See *The Best (and Worst) of International Property Tax Administration, COST-IPTI Scorecard on the Property Tax Administrative Systems of the US States and Selected International Jurisdictions (June 2019)*.

The COST scorecard evaluates state property tax systems on the characteristics of:

- Transparency
- Procedural fairness
- Consistency

What's Wrong with Pennsylvania's System?

Pennsylvania's worst place ranking is due to three things: 1) being the only state in the country using a "base year" system, 2) the failure to mandate periodic countywide reassessments state-wide, and 3) the failure to maintain assessments in an equal and uniform manner between countywide reassessments.

With respect to revaluation cycles, COST recommends "the ideal real property valuation cycle is annual to three years. This provides certainty for both taxpayers and tax collecting bodies. ... Because market cycles can quickly change, a revaluation cycle longer than three years is inappropriate." COST 2019 Scorecard at 16. Similarly, The International Association of Assessing Officers (IAAO) recommends that annual assessment of all real property, but no less than every four to six years. *IAAO Guidance on International Mass Appraisal and Related Tax Policy at Sec. 3.3*.

Sixty-six of Pennsylvania's 67 counties do not meet this one-to-six-year revaluation standard. Only Philadelphia County has a revaluation cycle within the standards. Franklin County, Pennsylvania last reassessed 62 years ago in 1961.

In lieu of periodic revaluation, Pennsylvania uses a "base year" system. The constitutionality of Pennsylvania's base year system was questioned over a decade ago in *Clifton v. Allegheny County*, 969 A.2d 1197 (Pa. 2009), in which Allegheny County trial judge R. Stanton Wettick declared Pennsylvania's



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entire base year system to be unconstitutional as violating the Uniformity Clause.

In reaching this holding, Judge Wettick included a 50-state survey in which he concluded that (as of that time) Pennsylvania and Delaware were the only remaining states using a base year system. See *Clifton v. Allegheny County*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, *7 (*Ally. C.C.P. GD 05-028638, June 6, 2007*). On appeal, the Pennsylvania Supreme Court ruled that the base year system was unconstitutional "as applied" in Allegheny County but stopped short of declaring the entire system to be unconstitutional.

The Supreme Court continued, "the General Assembly is the appropriate place in the first instance to fashion a more comprehensive and soundly constitutional scheme." 969 A.2d 1229. Supreme Court Justice Baer, concurring, but writing separately, urged the Supreme Court to, at a minimum, create a test for when countywide reassessment should be triggered given that he predicted (accurately) that Pennsylvania's legislature would fail to address the inadequacies in the base year system.

A decade after Pennsylvania's *Clifton* decision, in May 2020, Delaware's highest court declared that state's "base year" system to be in violation of the Delaware Constitution's Uniformity Clause, which is strikingly similar to Pennsylvania's in requiring that "all taxes be uniform upon the same class of subject properties within the territorial limits of the taxing authority." See, *In re Delaware Public Schools Litigation*, 2020 Del. Ch. LEXIS 177, 239 A.3d 451 (*Del. Ch. May 8, 2020*).

In its comprehensive 150-page Opinion, the Chancery Court of Delaware writes, "The counties' outdated assessments conceal a reality of non-uniformity beneath a cloak of uniformity," and further, "[o]ptimally, every system of assessment will incorporate both the preference for present market value and the requirement of uniformity into its general scheme; but, when these two concepts cannot be accommodated under the facts of a specific case, the former must give way to the latter as the true measure of assessment." *In re Del. Pub. Schs. Litig.*, 2020 Del. Ch. LEXIS 177, *3-*5, *60, slip op. at 3, 45.

Back in Pennsylvania, earlier this year in a 3-3 split Supreme Court decision, Justice Dougherty wrote separately criticizing the base year system and calling upon the legislature to fashion a more comprehensive and sound constitutional property tax scheme. *GM Berkshire Hills LLC v. Berks County*, 290 A.3d 238 (Pa. Feb. 2023).

Beyond the obvious issue with the base year system of property taxation being based on stale data and completely out-of-date market conditions, this system also presents a fatal blow to the stated goal of all forms of taxation – namely uniformity.

Change is needed. While Allegheny County has had more countywide reassessments in the last 20 years than nearly every county in the state, even our system was declared to be unconstitutional as applied in *Clifton*. The changes needed to Pennsylvania's system need to be state-wide and applied to all.

What is the Fix for Pennsylvania?

To bring its system up to standards and into conformity with our constitution's Uniformity Clause, Pennsylvania needs to do three things:

1. Countywide Reassessment. Every County. Every 3-6 years.

Having a three-to-six-year revaluation cycle (possibly based on county size) would enhance uniformity by bringing values in line with market changes more frequently. Frequent revaluation also ensures that the property data would be kept current. Regular reassessment is actually less expensive than reassessments separated by three decades of change.

2. Equal and Uniform Taxation

An Equal and Uniform taxation methodology, which has already been

enacted in some states, is similar to the sales comparison approach in appraisal. It is a remedy that allows a taxpayer to use comparable assessments to prove that the taxpayer is not taxed in an equal and uniform manner with comparable properties.

This is a remedy that every taxpayer understands intuitively and there is precedent in other states for enacting this standard explicitly into statutory law. The remedy ensures that all taxpayers are paying their fair share of the burden among their like taxpayers which is the goal. Moreover, such a requirement would enhance predictability for all taxpayers, which is another precept of sound tax policy.

3. Central Statewide Assessment Website.

Pennsylvania would benefit from a central statewide assessment website providing clear explanations about property taxation. This simple change would greatly improve consistency and transparency. Counties often have different standards. Having steps, definitions and rules that are consistent state-wide is important to taxpayers moving to the state. For example, a clear definition of the property interest that is being taxed and steps needed to prove that along with a central repository of information would go a long way to improving Pennsylvania's system.

Pennsylvania need not recreate the wheel – already having the worst property tax system in the country means that we can borrow from dozens of better reassessment models and nearly anything will be an improvement. The changes that are needed to enhance transparency, procedural fairness and consistency are actually quite simple, and would go a long way to breathe life into the constitutional mandate of uniformity in taxation. ■

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