Pennsylvania Court Dismisses Affirmative Appeal Seeking a Tax Assessment Increase

In a recent opinion following the filing of a summary judgment motion by Brach Eichler, Judge Dally of the Northampton County Court of Common Pleas in Pennsylvania dismissed an affirmative appeal brought by the Bethlehem Area School District holding that the School District's action was borne out of a systematic and intentional practice of selectively targeting commercial properties for District-initiated appeal, in violation of the Uniformity Clause of the Pennsylvania Constitution. Judge Dally granted our motion in the matter of *Bethlehem Area School District v. The Board of Revenue Appeal of Northampton County and Lehigh Crossing Associates, LP*.

In response to our summary judgment motion, the School District asserted that they relied on a policy whereby appeals would only be filed on properties to the extent that there is a reasonable chance of producing at least $10,000 in additional tax revenue. The School District argued that the unwritten policy was not based on property type, therefore it was constitutional.

The taxpayer successfully argued that the evidence did not support the School District's position. Only commercial properties were targeted for appeal pursuant to the allegedly unwritten policy and therefore the Threshold was merely a proxy for targeting exclusively commercial properties for assessment appeal. Judge Dally agreed and found that no triable issue of fact remained, as it was clear that the School District was focused solely on appealing the assessments of commercial properties in violation of the Pennsylvania Constitution's Uniformity Clause.

Taxpayers in Pennsylvania have been struggling with the ability of local school districts to target only commercial properties for affirmative tax appeals seeking assessment increases. This practice of cherry picking commercial properties for appeal was for many years approved by Pennsylvania courts. However, in a much anticipated decision, the Pennsylvania Supreme Court deemed this practice under certain circumstances to be an unconstitutional violation of the Pennsylvania Constitution's Uniformity Clause in 2017. *Valley Forge Towers Apartments N, LP v. Upper Merion Area School District,* 163 A.3d 962, 978 (Pa. July 5, 2017). The Court held that a school district may not implement a scheme wherein only a certain sub-classification of properties are targeted for appeals, where that sub-classification is drawn according to property type. The ruling in this case is one of the first of its kind following *Valley Forge* and lays a groundwork for opposing unlawful affirmative appeals in Pennsylvania.

If you own or pay the real estate tax on a property that is the subject of an affirmative appeal, a thorough and immediate review of the appeal is critical to ensure that your rights and defenses in the appeal are protected. Contact Dan Pollak at 973-403-3119 or dpollak@bracheichler.com.