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INTERIM REAL ESTATE TAX ASSESSMENT:

**ESTIMATING TAXES ON NEW CONSTRUCTION IN PENNSYLVANIA AFTER
*DOWNTOWN SCHOOL DISTRICT V. CHESTER COUNTY BOARD OF
ASSESSMENT APPEALS/LIONVILLE S.C. 31 MAP 2004 (2006)***

TAX BACKGROUND

In Pennsylvania, real estate taxes consist of a County tax bill for each calendar year beginning January 1, a Township tax bill for a tax year beginning January 1, and a School District tax bill for the fiscal year beginning July 1, of each tax year. Delaware County where much new construction exists, will be used by way of example. The rules in most other suburban counties in Pennsylvania are the same.

For the tax year 2006, Delaware County's millage rate was 4.45, Edgmont Township's millage rate was 0.4824, and the School District's millage rate was 19.4695 (effective 7/1/06) for a total of 24.4019 mills. The "millage rate" is the tax rate, which is multiplied times the assessment of your property to determine your real estate tax.

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Since ten mills equals one percent (1%), the total County, Township and School millage for 2006 therefore being 24.4019 mills, effectively, the total real estate taxes on a particular piece of real property in 2006 in Edgmont Township is equal to 2.44019% times the assessment or \$24,4019 per \$1,000,000.00 of assessment. (No doubt 2007 tax rates will edge upward.) ¹

THE INTERIM ASSESSMENT

In the year 2000, Delaware County had a “Countywide” reassessment in which all properties in the County were to be re-assessed at 100% of their 1998 base year value. (Chester and Montgomery County reassessed in 1998 using 1996 as a base year.) Obviously, new construction in 2007 did not exist in the year 2000, so, under Pennsylvania County Assessment Law, once a new home is constructed and occupied, the County Board of Assessment (“Board”) (acting for the Township, School District and County) must reassess the property to increase the assessment from that for a building lot only to reflect the completed house and lot. This is called an “interim” assessment and generally becomes effective upon notice, which is usually a few months after an occupancy permit is issued and the settlement is completed. (Normally an assessment can only be changed --prospectively in the following tax year – as a result of an appeal

¹ The ratio of assessment in Delaware County applied to 2006 should have been 72.5% so the effective tax rate is $(2.44019 \times 72.5\% = 1.769\%)$. In other words on one million dollars of fair market value in property in Edgmont Township, if correctly assessed at the 72.5% CLR or \$725,000 would pay \$17,691 in total real estate taxes or 1.769% of its value. By way of contrast, a property worth \$1,000,000.00 in Willistown, Chester County in 2006 which had an assessment at the 60.8% CLR had an effective tax rate of $[20.979 \text{ mills} = 2.0979\% \times 60.8\% =]$ 1.2755% or \$12,755.00 in total tax on the \$1,000,000.00 of fair market value.

or a countywide reassessment). When an owner receives the notice of interim assessment, the owner is then billed by each taxing authority for the increase in assessment for the part of the tax year remaining on the date of notice. While an owner has 40 days from the date of the “interim” assessment notice to appeal to the county Board of Assessments, the new assessment immediately goes into effect as of its effective date and may only be later reduced retroactively if appealed by the owner.

HOW IS THE INTERIM SET?

Obviously, the final total assessment on land and building becomes the most relevant issue to you the new owner. Delaware County has an “Estimated Predetermined Ratio of Assessment” (EPR) of 100% of its 1998 Base Year Value, but the County on an interim assessment has generally been entitled to reassess the property at 100% of its current year fair market value except as provided below. “Fair market value” is statutorily defined as a result of a review of sales of comparable properties, potential income of the property and costs of the property. Typically, comparable sales and actual selling prices of comparable single family residences are considered to be the most relevant in valuing such residential property but cost of construction in new properties is given some consideration. While the purchase price of real estate is not conclusive as to value, it is a strong indicator. In the case of new residential real estate, the County rarely uses the actual purchase price as being the “fair market value”.

UNIFORMITY ARGUMENT

Notwithstanding the foregoing, there is a general statutory principle of tax assessment law that assessments are supposed to be “uniform” with comparable properties in the taxing district, which is also a Pennsylvania and a U.S. Constitutional mandate. Only in rare instances, prior to a recent Pennsylvania Supreme Court decision, (discussed below), was a methodology other than comparing fair market value to the applicable ratio used by the Board or the Court.

COMMON LEVEL RATIOS

The Pennsylvania State Tax Equalization Board (STEB) computes data from sales of real estate in each County in Pennsylvania and annually publishes the “Common Level Ratio” (CLR) of assessment to value in a County. Put most simply, the STEB determines a ratio of each assessment to sale for each real estate sale in the County for a particular year, averages those ratios, and then establishes the “Common Level Ratio” for a particular year. Per statute, the Common Level Ratio applicable to a tax year is actually the ratio of sales from a year two years prior to the tax year. If there were more than a 15% variance between the Common Level Ratio and the County’s Estimated Predetermined Ratio, the law dictated that the Board of Assessment and the Court must use the Common Level Ratio times fair market value not the 100% ratio. If a variance of less than 15%, prior to the Supreme Court decision in Downingtown discussed below, the 100% was mandatory.

For example, the 2002 Common Level Ratio of sales in Delaware County (87.2%) was applicable to the 2004 tax year in Delaware County, while the 2003 CLR

was 79.5% applicable to the 2005 tax year and the 2004 CLR was 72.5% applicable to the 2006 tax year. As can be seen, the 2002 CLR applicable to Delaware County for the 2004 year, 87.2%, did not vary by 15% from the 100% predetermined ratio so the County could theoretically assess properties under appeal for 2004 at 100% (EPR) of fair market value in 2004. For the 2005 tax year, since the 2003 Common Level Ratio was 79.5% that 79.5% ratio had to be used for 2005 assessments instead of the 100% (EPR) Ratio, and since the CLR for 2004 was 72.5% it had to be used for 2006. Likewise, the CLR for 2005 is 64.7% and it must be used for the 2007 tax year.

The Boards of Assessment however have not used this method in establishing the new interim assessment. For example, the Delaware County Board of Assessment has a computer model in place from its year 2000 county wide assessment which, when analyzing a newly constructed property for interim assessment in the current year (here, 2007), is supposed to “equalize” the new assessment with the 1998 base year valuation of other comparable properties in the county. Some taxpayers and their attorneys have asserted that this system does not adequately accomplish this; some attorneys have taken the position that the Delaware County assessment for all years starting in 2000 and later years should be, if not the current fair market value times the CLR then it should be the appraised value of the property in the 1998 base year (or the hypothetical appraised value if it were newly constructed after 1998). For Chester and Montgomery Counties the Base Year is 1996.

NEW CASE LAW

NOTE: A very recent Pennsylvania Supreme Court Decision in December 2006, Downingtown Area School District vs. Chester County Board of Assessments and Lionville S.C., 31 MAP 2004, now seriously questions a few of the “standard” real estate tax principles and procedures just mentioned. It will take some time for the full impact and understanding of the Downingtown decision to evolve but the case does to say that the 15% variance rule explained above is unconstitutional i.e., if the CLR is 89% and the EPR is 100% you use the 89%. In Delaware County this may not be as important since the 2005 CLR applicable to the 2007 tax year of 64.7% is already varying by more than 15% and therefore the 64.7% applies. Downingtown may also be interpreted to mean that a taxpayer, instead of simply seeking the current CLR times fair market value (e.g. 64.7% x the 2007 sales price for a 2007 assessment) may instead seek a lower assessment by showing the average of assessments of other “similar” properties in the neighborhood. This could be a great opportunity for a much lower assessment since traditionally new construction has been the most severely hit on re-assessment and prior to the Downingtown decision courts simply did not permit evidence of assessments of comparable properties in the neighborhood.

The bottom line is that typically the “interim” assessment assigned to a newly constructed and delivered residential property in Delaware County, (or other counties) while rarely equal to the sales price and usually somewhat less, does not, in the opinion of many real estate professionals and tax attorneys, result in an assessment that is

“equalized” with other assessments in the County. Because of the foregoing, and based upon past experience, it is expected that the County Board may not, on an interim appeal, reassess your new construction property at the applicable CLR times FMV (purchase price), but that the resulting assessment from their computer model will be higher than CLR x FMV or certainly higher than “similar properties in the neighborhood” (and will not be uniform with other “similar” albeit older properties.) At a bare minimum properties subject to an interim reassessment in Delaware County should not be assessed at any more than 64.7% of the 2007 selling price for assessments effective in the 2007 tax year. (See Chester County 54.9%; Montgomery County 53.4%)

The 2006 CLR applicable to the 2008 tax year will not be published by STEB until July 1, 2008 (some prognosticators think Delaware County may drop to 55% for 2008 and Montgomery and Chester Counties each below 50%).

APPEALING THE INTERIM-IMPORTANCE OF DATES

NOTE: Downingtown may also permit use of the CLR one year prior to the tax year or even the CLR of the tax year. In Downingtown, the Court used the actual tax year’s CLR and a February (unreported) Commonwealth Court Case suggest you use the CLR on year prior.

If the new “interim” assessment is a greater percentage of purchase price or not uniform with similar properties, the homeowner/taxpayer must appeal to the County Board of Assessment within 40 days of the date on the interim notice and, if unsatisfied

with the Board's decision, to the Court of Common Pleas. An individual owner or an attorney licensed in Pennsylvania may represent the owner before the Board or Court.

Theoretically, if the interim assessment is issued after August 1, 2007 it will be too late to file the regular 2008 appeal due 8/1/07. The County can still use the 64.7% rate for the 2007 tax year (in a Delaware County appeal), covered by the interim appeal but unless requested, the Board will not apply a new lower 2008 CLR for the assessment used in the 2008 tax year. Chester County has refused to apply the later year CLR. If the proper ratio is not used to determine the assessment by the Board (or if you feel you are not being taxed uniformly) a Court appeal may be indicated since this would be the only way to appeal the 2008 assessment.

Once a matter is before the Court, all subsequent tax years (e.g., you appeal the 2007 interim tax assessment to the Board and then to the Court so 2008 and later years are also before the court) until the case is resolved, and must also be set. Keep in mind that the 2007 school tax year, which uses the 2007 calendar year assessment set by the county, actually runs July 1, 2007 to June 30, 2008. If you appeal a 2007 interim and by the time you get your result from the Board, it is often the after August 1, 2007 appeal date, then if you are satisfied with the 2007 assessment you don't get the advantage of the 2008 CLR without a court appeal.

ESTIMATING ANNUAL TAXES

In making an estimate of annual real estate taxes, after construction is completed, one should use a possible assessment of the most recent applicable Common Level Ratio (CLR) times the final sales price, including options times the most

current tax millage rates available at the time of computation. As new rates become available you should use them. To summarize: Sales price x CLR = Estimated Assessment x Estimated Millage = Estimated Annual Tax. (Remember the 2005 Delaware County CLR applicable to 2007 tax year is 64.7%. The 2006 CLR for use in 2008 will not be available until July 1, 2007.)

REVIEW WITH LEGAL COUNSEL

Once the new (interim) assessment on your property is received from the Board, you may wish to review it with legal counsel for appeal. Our firm is available to represent you on a contingent basis (fee based upon percentage of tax savings), and the owner would only be responsible for filing and appraisal fees.

This summary was prepared by Joseph Patrick O'Brien, Esquire, Kassab, Archbold & O'Brien, LLC, 214 N. Jackson Street, Media, PA 19063, 610-565-3800, josephobrien@kassablaw.com, an attorney with significant practice emphasis in real estate tax assessment litigation, business and estate matters. Mr. O'Brien's website is also a resource for information on this subject. Please note that evolving case law and changing statutes can significantly alter what has been provided here.

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See also: <http://www.lgc.state.pa.usdeskbook03/Issues30.pdf>

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Note: This should not be considered legal advice. Each legal matter stands on its own particular facts and case and statutory law is constantly evolving. Consult your legal advisor.