

THE COST OF INACTION – PROPERTY REASSESSMENTS

PA Senate Democratic Policy Committee Hearing

Gold Room. Allegheny County Courthouse

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Good tax policy requires four things: predictability, stability in the tax base, fairness, and transparency. My remarks will focus on how cyclical countywide reassessment in all counties will address these policy needs, which will be to the benefit of all. Today, I will be sharing both bad news about the reality of our current property tax system, but I will also be sharing good news about some important infrastructure Pennsylvania already has in place as we work together collaboratively to move Pennsylvania to a better system.

The Problem

Pennsylvania's property tax system is widely known to be dysfunctional - both from those inside Pennsylvania and those outside the Commonwealth. For twenty-five (25) years, my law practice has been exclusively devoted to property tax throughout Pennsylvania's sixty-seven (67) counties. But, because my law firm also works in all fifty (50) states and Canada, I have had the opportunity to see how many states property tax systems work. I have been advocating for regular countywide reassessment in Pennsylvania for years and I can tell you that as I travel and speak to different stakeholders throughout Pennsylvania – assessors, taxing bodies, lawyers for taxing bodies, lawyers for taxpayers, and even our Pennsylvania Supreme Court – there is, now, more than ever, something different in the air. There is momentum and a desire for the legislature to move Pennsylvania to regular countywide reassessment.

I will start with the bad news. I am a former teacher. So it pains me to share that the state and system where I have spent my entire life's work, has a property tax system that ranks dead last – tied with Mississippi – with a grade of “F” in the most recent 50-state comprehensive benchmark study by the Council on State Taxation (COST). *The Best (and Worst) of International Property Tax Administration COST-IPT Scorecard on the Property Tax Administrative Systems of the US States and Selected International Jurisdictions (June 2019)*. Law

students even recognize the condition of Pennsylvania's property tax system. See *The Never-Changing Assessment: Pennsylvania's Broken Property Tax System*, Penn State Law Review, May 2024 Nicholas A. Baker.

Pennsylvania's worst place ranking is directly tied to Pennsylvania being the only state in the country using a "base year" system and the fact that we do not have a statutory mandate for periodic countywide reassessments in every county.

The Cost of Inaction.

The Committee titled this hearing today "The Cost of Inaction." That is exactly right. We are already experiencing the cost of inaction as the only state that has a base year system. (The State of Delaware was the only other state which had a base year system. In May 2020, Delaware's highest court declared Delaware's base year property tax system to be unconstitutional. See *In re Delaware Public Schools Litigation*, 239 A.3d 451 (Del. Chancery Ct. May 8, 2020). The litigation was initiated by school districts which were experiencing inadequate funding from Delaware's base year property tax system.)

First, by way of example, the City of Pittsburgh's property tax base is now at a competitive disadvantage to the Central Business District of every other city in the entire country, and this is a direct result of our base year system and the fact that only in Pennsylvania is there no requirement for regular countywide reassessment. Let me explain. Everyone is familiar with the impact that the COVID pandemic has had on the office market. Hybrid work is here to stay and every office market in the country has experienced a shocking drop in office market values since 2020. But the difference is that every other major city in the country (including Philadelphia, because Philadelphia **does** conduct regular countywide reassessments) has already had one or even two countywide reassessments since 2020. The point of a countywide reassessment is to rebalance the assessments of each property in line with the current real estate market. By definition, countywide reassessment is a tax-neutral event. So, if one property type's value is going down, another property type's value is going up. Office is only one segment of the commercial market and if one segment is going down in value there are always other commercial property types whose value is going up. With regular cyclical reassessment, the market upswing of the other properties is captured and there is no loss in revenue to the government bodies. Again, regular cyclical countywide reassessment is, by definition, tax neutral. That is stability in

the tax base. Every major city in the country has already restabilized its base since 2020. Except major city but Pittsburgh that is, because our system does not have the tools to make up that loss in value in the office market. The taxing bodies cannot make that loss up by setting a higher millage rate. And the taxing bodies cannot make that loss up by appealing their way out of the deficit. Countywide reassessment is the only way. And, while the City of Pittsburgh's office market provides an example, that same scenario – the failure to capture changes in the market - is happening all across the Commonwealth in counties that have not reassessed in 10, 20, 30, 40, 50, or – in the case of Franklin County, 63 years. The first cost of inaction is the loss of a stable tax base.

The second cost of inaction is the cost to individual county governments in having to take on a countywide reassessment on their own initiative when they hit their millage rate cap. Because it is not just the cost of expensive litigation requesting countywide reassessment that we have seen in Beaver, Washington, Schuylkill, Allegheny, and other counties. It is also the cost to counties like Indiana County in 2016, who are forced into countywide reassessment when the county hits its millage rate cap. There are many Pennsylvania counties that are at or near their millage cap. And, as we have seen play out repeatedly in Pennsylvania, the cost of irregular countywide reassessments is much, much, much higher than the cost of regular countywide reassessment.

The third cost of inaction is harder to see because it is lost opportunity. And that is the chilling effect on investors -both out-of-state and those already here - who want and need to be in Pennsylvania's markets. Just as government needs predictability to budget, so do businesses need predictability to budget. The inability to budget accurately for real estate taxes is the biggest obstacle to potential buyers and developers who want to be in Pennsylvania's market. I take at least three calls a week from folks who want to do a deal in Pennsylvania and need help understanding our system so that they can attempt to budget. I cannot tell you how many deals that have not happened, offers that have been killed, and facilities did not get built as a result of these discussions about our system. One example is a senior housing owner from Texas who wanted to develop a state-of-the-art memory care facility in Pennsylvania. This company already had a site picked out, had an option on the land and building plans. The facility would have provided needed care in a community that needs it. The facility would have provided hundreds of jobs. The facility would have made the highest and best use of that land, and the facility would have contributed to the tax base for the local school

district without (because of the nature of the business) using any of the school district's resources. But there was no predictability. There was no stability. They couldn't pencil it out. And it did not get built. I have myriad examples of the kinds of deals Pennsylvania is missing out on, due to our current system.

That is the bad news. There *is* a cost to inaction.

But there is a solution that will cure the costs of inaction and provide the stability and predictability in our tax system that all stakeholders want and need.

The Solution

The solution is mandatory, periodic, countywide, reassessment in every county. This solution benefits all. We need only look at the rest of the country to see that it works.

What Works

I propose a triennial countywide reassessment system, under which assessments are updated every three years. This cycle is supported by the industry associations and by the lived experience of other states. The Council on State Taxation opines "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." The International Association of Assessing Officers recommends reassessment annually, but no less than every four to six years. Nearly every other state already reassesses cyclically.

I propose as a model the Ohio triennial system which is widely believed to be the best system in the country. *See Ohio Revised Code, Section 5713.01*. Three years is the right amount of time, because it allows market adjustments to be captured on a timely basis. In Ohio's system, a full countywide reassessment is done every six years, and in between, in the third year a statistical update is done. With values being adjusted every three years, the market changes are captured in a timely way, the base remains stable, government can budget, government can reliably provide the services that taxpayers rely on, and property owners have the information they need to budget and plan. In Ohio, the counties are staggered so that each year, one-third of the Ohio counties are undergoing reassessment. This triennial cycle is the general framework. We can do some fine tuning for more rural Pennsylvania counties that do not experience market fluctuations as frequently.

Some states have instituted annual reassessments. That is not ideal because of the wasted money on annual reassessments and the difficulty of doing a thorough job with that frequency. Three years is just right to account for market fluctuations and keep the base stable.

What Does Not Work

One idea that has been floated - instead of making countywide reassessment cyclical on a period of years – would be to use a statistical trigger such as the coefficient of dispersion or “COD” – to determine when a county would be required to reassess. In practice it does not work. It does not work for two reasons. First, as we have recently seen in Allegheny County with the common level ratio, a statistical measure is open to manipulation. We have none of the assurance that we do with cyclical reassessment that market changes will, in actual practice, be captured accurately and timely. Second, it has been tried and it has failed. In all the country, only one state – Vermont – has used a statistical measure as its trigger for countywide reassessment. In practice, what occurred in Vermont is that counties were not prepared to handle a countywide reassessment when the market fluctuations caused the trigger to be hit. And when the counties reached out to outside revaluation companies to assist, the counties all needed that help at the same time and there were not enough resources to reassess so many counties all at the same time. And the delay in hiring outside revaluation companies caused the state to miss timely reassessment to adjust for market fluctuation. And because Vermont’s system of using a statistical trigger failed, the Vermont legislature passed a new statute, which takes effect January 1, 2025, which moves Vermont to a cyclical reassessment system just as is used in the rest of the states in the country. *See Vermont Statutes Annotated, Title 32, Chapter 129, Subchapter 002, Section 4041a. Reappraisal.*

So, there is a solution. We can look to the example of Ohio and other states as to how to set this up and how to do it right, which will benefit all.

And, I said I would share some good news. Pennsylvania has some key pieces of infrastructure in place that will help us do this right.

The Good News

First, Pennsylvania’s prospective property assessment system allows appeals to be filed and resolved before the tax bills go out. What I mean by that is assessment appeals are filed and resolved at the Board of Assessment before

January 1 of the calendar year when the tax bills go out. That has been the system in Pennsylvania in all counties for years, and a few weeks ago Allegheny County just joined the rest of Pennsylvania counties in moving to that prospective system. That creates efficiency in our system by allowing tax bills to go out the next calendar year on the correct assessment, so taxpayers are paying on the correct assessment and taxing bodies do not have to issue refunds. Our prospective system is efficient and provides an aspect of predictability that good tax policy requires.

Second, Pennsylvania has knowledgeable well-trained assessors in counties throughout Pennsylvania who genuinely care about fundamental fairness and getting it right. To become a certified professional examiner (“CPE”), which is the Pennsylvania statutory designation that Pennsylvania assessors pursue, and Chief Assessors are typically required to have, requires four weeks of class, a written exam, and oral exam. It is a particularly challenging exam. Once assessors earn the CPE designation, they are required to take 24 credit hours of continuing education every 2 years, an average of 12 hours per year. That is the same amount of continuing education Pennsylvania requires of lawyers. They are experts in their field, and they deeply understand the concepts that I have laid out here today. So, we have our trained assessors as a resource as we navigate the path forward and as the trained workforce in place that we will need when we institute the new system.

Conclusion

The triennial system I propose will lead to a stable tax base so that government reliably has the funds to provide the services that taxpayers want and need. The triennial system will lead to predictability for government so they can set budgets and know that they will have enough funds to provide the services that are their mission. The triennial system will lead to predictability for the individual property owner to set their own budgets, so they know how much they are going to pay each year, and so that they can make informed decisions to buy or invest or develop properties in Pennsylvania.

Thank you for your courage and energy in raising this issue, which is important to all Pennsylvania taxpayers and government bodies. I believe that we can move Pennsylvania forward to a triennial system, that we can build out the framework and, working together, we can move Pennsylvania to the top of the class and a grade of “A”.