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TAX CERTIORARI AND CONDEMNATION

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Recent Property Tax Decisions Reject Equal Protection Argument

Many of New York's most important property tax cases over the past quarter century have come from Long Island, especially Nassau County. Following this tradition, two of the more interesting property tax cases over the last year or so involve Nassau County.



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The most recent such case upholds the county's classified assessment system, which results in vast inequities. It also illustrates the point that in matters of taxation, it is almost impossible to prove violations of the constitutional rights of equal protection. *Tilles Investment Co. v. Gulotta*¹ was the Appellate Division's reversal of a Supreme Court decision holding that the classification system in Article 18 of the Real Property Tax Law, as applied in Nassau County, properly raised an equal protection argument as to the uniformity of assessments.

A little history is necessary to understand Article 18. In 1975, the Court of Appeals in *Hellerstein v. Town of Islip*² held that assessments in New York State must be at 100 percent of full value, thus negating almost two centuries of disregard of the statutory requirement of full value. Fractional assessments masked the common practice of assessing commercial properties at higher percentages of full value than residential properties.

Commercial property owners used *Hellerstein* to seek orders that municipalities must assess all properties at full value. At the same time, commercial property owners ought to use the state equalization rate (generally established as a means of apportioning state aid to school districts, and equalizing school and county taxes among towns and cities which assessed at different percentages of full value) as a means of proving the uniform rate of assessment in an assessing unit. The Court of Appeals allowed commercial property owners to use state rates to prove ratio in the Syracuse case of *Ed Guth Realty, Inc. v. Gingold*³ and the Nassau case of *860 Executive Towers, Inc. v. Board of Assessors*.⁴

These decisions raised serious concern among many municipalities, especially New York City and Nassau



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County, which believed their residential tax payers would face huge tax increases and that inequality victories by commercial taxpayers would lead to bankruptcy. A half decade of annual enactments of new statutes to "solve" these problems was followed by the invalidation of most such laws. The Legislature in a special session in 1981 overrode Governor Carey's veto of the statute containing Article 18. The title of Article 18 openly states its purpose:

Preservation of Class Share of Taxes in Municipal Corporations except Counties within a City, included within the boundaries of a special assessing unit...

Article 18 applied only to the special assessing units of New York City and Nassau County. The class share of taxes being preserved resulted from the assessment of commercial properties at higher ratios of full value. Bankruptcy was staved off for New York City and Nassau County. But in a supreme irony, the much higher share of taxes for commercial properties is the major cause of the near bankruptcy and financial crisis facing Nassau County today.

The effect of Article 18 in Nassau County is that effective tax rates for commercial properties are over twice that of most other assessing units. Effective tax rates throughout most of the United States are about 3 percent, i.e. taxes are about 3 percent of a property's market value. This especially holds true in the adjacent Suffolk County towns of Huntington and Babylon. Even in New York City, where Article 18 also applies, the effective tax rate is about 4.7 percent. But in Nassau County, effective tax rates for commercial properties range from a minimum of 5.75 percent to an incredibly high 8.3 percent. This means taxes for a commercial property are supposed to be 8.3 percent of its market value.

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Rational Basis

In 1982, immediately after the enactment of Article 18, the Court of Appeals held in *Colt Industries v. Finance Administration*⁵ that a system of separate assessment procedures for New York City and Nassau County were sustainable “on its face.” The Court held that a rational basis existed to treat New York and Nassau differently than the rest of the State because of “the unique nature of those communities with their high density of population and diversity of property.”

Despite the *Colt* holding, the lower court in *Tilles* did not dismiss plaintiffs’ cause of action that a rational basis for allowing classified assessments only in special assessing units was lacking because Nassau County’s demographic characteristics and housing statistics were more similar to those in the non-special assessing units of Suffolk, Westchester, and Erie counties than to New York City.

The Appellate Division disagreed. First, the court held that in a taxation case, which “does not involve a suspect class or interfere with the exercise of a fundamental right, the scope of judicial review is limited to whether the statutory classification is rationally related to a legitimate government objective.”

The court further stated: “The rational basis test, which is often characterized as ‘a paradigm of judicial restraint,’ is not a license for the courts to judge the wisdom, fairness, or logic of legislative choices.”

The rational basis standard of review is especially deferential in the context of classifications created by complex tax laws. Thus, in reviewing the validity of taxation classifications, ‘the equal protection clause does not prevent State Legislatures from drawing lines that treat one class of individuals or entities differently from others unless the difference in treatment is ‘palpably arbitrary’ or amounts to an ‘invidious discrimination.’”

In plain language this means taxpayers seldom if ever win equal protection cases. The Appellate Division held that the “classification has been upheld by the Court of Appeals (see, *Matter of Colt Inds. v. Finance Administrator of City of N.Y.*, 54 NY2d 533,544-545). In addition, the ‘creation of different classes for purposes of taxation is permissible as long as the classification is reasonable and the taxes imposed are uniform within the class’ ...”

Article 18 may be legal, but it is poor public policy for Nassau County. In practical terms, it reduces taxes for homes by about 20 percent, while increasing commercial property taxes by up to 80 percent. These higher taxes reduce the market value of every commercial income producing property by 20 to 35 percent. It effectively puts a

damper on new commercial development as developers do the math and easily see the financial benefits of building on the Suffolk side of the County line. It is a major contributory factor to the County’s financial crisis because tax certiorari cases involving less valuable but more highly taxed commercial properties produce larger tax refunds.

‘Insignificant Impact’

Another recent Nassau County case with Statewide implications is *Colella v. Board of Assessors*⁶ where neighboring property owners in the Village of Old Westbury challenged the tax exemption of a Buddhist Temple.⁷ The Supreme Court held that these neighbors with a minuscule pecuniary interest in the loss to the tax base from an improperly exempt property lacked standing. The Appellate Division reversed, holding that such an interest “constitute[s] a cognizable injury to such taxpayers.”

The Court of Appeals reversed the Appellate Division and stated:

Here, petitioners have not alleged anything more than a legally erroneous determination to grant a religious use tax exemption regarding a single parcel of real estate, which concededly would only have an insignificant impact upon the tax base of Nassau County.

In so doing, the Court of Appeals distinguished *Dudley v. Kerwick*⁸, where taxpayers challenged an upstate Assessor’s illegal grant of exemptions to “88 percent of the Town’s landowners as officers in a single purported religious denomination calling itself the Universal Life church.” Standing to challenge exemptions, the Court held, would be allowed in cases of “wholesale” exemptions, but not where a single exemption has an “insignificant impact” on the tax base.⁹

(1) 733 N.Y.S.2d 438 (2d Dept. 2001)

(2) 371 N.Y.S.2d 388, 37 N.Y.2d 1 (1975)

(3) 358 N.Y.S.2d 367,34 N.Y.2d 440 (1974)

(4) 53 A.D.2d 463, 385 N.Y.S.2d 604 (2d Dept. 1976), aff’d sub nom, *Pierre Pellaton Apts., Inc v. Board of Assessors*, 401 N.Y.S.2d 1013, 43 N.Y.2d 769 (1977)

(5) 446 N.Y.S.2d 533, 54 N.Y.2d 533 (1982) (upholding the non-use of State rates only in special assessing units; (Article 18 was not at issue there).

(6) 718 N.Y.S.2d 268,95 N.Y.2d 401 (2000)

(7) Assessments must be timely protested during brief protest periods. New York City and Nassau County protest periods both end on March 1, 2002. The protest Period for almost all Villages is from Feb. 1 to Feb. 19, 2002. Administrative protests are a prerequisite to the filing of judicial petitions.

(8) 439 N.Y.S.2d 305, 52 N.Y.2d 542 (1981)

(9) The research for this article was facilitated by The Real Property Tax Administration Reporter, which publishes lower court and appellate decisions, opinions of counsel, rules affecting property tax administration, and decisions on eminent domain and zoning. It is published by The New York State Office of Real Property Services.