

Stradley Ronon Stevens & Young, LLP  
2005 Market Street  
Suite 2600  
Philadelphia, PA 19103-7018  
215.564.8000 Telephone  
215.564.8120 Facsimile  
www.stradley.com

With other offices in:  
Washington, D.C.  
New York  
New Jersey  
Illinois  
Delaware



www.meritas.org

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## Chester-Upland Ruling May Mean Higher Tax Assessments for Pennsylvania Properties With Billboards

In a case decided Dec. 27, 2018, *In re: Consolidated Appeals for Chester-Upland School District*, 2018 WL 6797482 (Pa. Cmwlth. 2018), the Commonwealth Court of Pennsylvania addressed the question of whether revenue generated from billboard leases, rents or easements may be considered when determining a property's fair market value for tax assessment purposes. After examining the Consolidated County Assessment Law (CCAL), 53 Pa. C.S. § 8801, et seq., the Commonwealth Court concluded that "a property's suitability to a billboard use and income earned by the property owner from the rental of the property to a billboard operator are not excluded from a fair market valuation." Said another way, the *Chester-Upland* opinion makes clear that the revenue generated by a property owner from a billboard lease may be considered for tax assessment purposes.

The facts giving rise to the *Chester-Upland* case involve a number of real estate tax assessment appeals originating in Delaware County. A few years before the Commonwealth Court's decision, Chester-Upland School District and Chichester School District (together, the School Districts) increased assessments for 26 properties containing billboards located within their respective taxing jurisdictions for tax years 2015 and 2016. The increased assessments were subsequently appealed, and the appeals later consolidated into a single case heard by the Court of Common Pleas of Delaware County (Trial Court).

In an April 27, 2017 order, the Trial Court denied the School Districts' attempts to increase the assessments, stating that "a taxing authority may NOT use the presence or existence of [a billboard] thereon to increase a property's real estate tax basis or assessment based upon a claim of increased fair market value." In the *Chester-Upland* decision, the Commonwealth Court disagreed with the Trial Court's holding, and more specifically the Trial Court's interpretation of the CCAL as related to a billboard-centric exemption contained in Section 8811(b)(4) thereof.

The CCAL provides statutory authority to municipal bodies located in Class 2A – Class 8 counties to impose real estate taxes. The baseline rule set by the CCAL is that all real estate is taxable, but Section 8811(b) provides a list of exceptions to the baseline rule. With respect to billboards, Section 8811(b)(4) provides that:

No sign or sign structure primarily used to support or display a sign shall be assessed as real property by a county for purposes of the taxation of real property by the county or a political subdivision located within the county or by a municipality located within the county authorized to assess real property for purposes of taxation, regardless of whether the sign or sign structure has become affixed to the real estate.

According to the *Chester-Upland* opinion, the Trial Court erroneously interpreted Section 8811(b)(4), creating too broad an exclusion for billboards not supported by the statutory text. In particular, the Commonwealth Court opined that the Trial Court failed to distinguish physical billboard structures, which are properly excluded from assessment under Section 8811(b), from

the revenue a property owner may generate via-a-vis a billboard lease or a property's potentially increased value as a prime billboard location. The Commonwealth Court stated that there is "no justification in the text of Section 8811 for the Trial Court's holding that a valuation of the real property cannot consider the effect of a lease of the property to a billboard operator or a property's suitability for a billboard use."

Prior to the *Chester-Upland* decision, taxing authorities may have disregarded not only the physical billboards themselves when calculating a property's fair market value, but also any benefits a property owner could realize from such billboards (i.e., lease revenues). The *Chester-Upland* holding, however, clearly opens the door for taxing authorities to increase property assessments on parcels containing billboards based on the revenue such billboards may generate. Properties with billboards in Class 2A – Class 8 counties could experience rising assessments as taxing authorities become aware of the *Chester-Upland* ruling. One important point, however, is that because the CCAL applies only to Class 2A – Class 8 counties, the effect of *Chester-Upland* on Philadelphia and Allegheny counties remains unclear. Taxing authorities in any county could use the *Chester-Upland* rationale as a foundation for creative (potentially aggressive) arguments connecting income generated from a property to the property's assessed value, or to attack similar exemptions such as those for amusement park rides and greenhouses.

The *Chester-Upland* ruling is certainly a potential boon for many taxing authorities that have recently been pursuing aggressive and creative methods to increase their tax bases. Given the impact *Chester-Upland* could have in the local billboard industry, a further appeal would not be surprising, especially because the Commonwealth Court acknowledged "valid concerns" raised by the taxpayers. In any event, property owners (and billboard companies) surely will be waiting to see whether the *Chester-Upland* decision is appealed to the Pennsylvania Supreme Court and whether that court agrees to hear the appeal.



**Kevin R. Boyle**



**Tyler W. Mullen**

For more information, contact Kevin R. Boyle at 215.564.8708 or [kboyle@stradley.com](mailto:kboyle@stradley.com) or Tyler W. Mullen at 215.564.8589 or [tmullen@stradley.com](mailto:tmullen@stradley.com).