

REAL ESTATE & TAX ALERT

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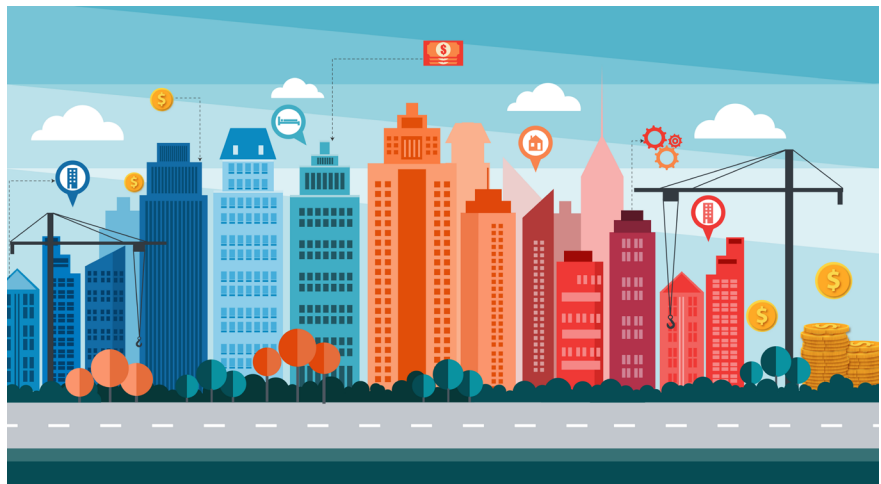
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When is it "fair" to use a recent arm's-length sale to determine fair market value for Ohio property tax purposes?



The Ohio Supreme Court recently ruled that statutory changes made in 2012 to the Ohio property tax valuation statute have real meaning and can change the outcome in some situations. Following the Court's ruling in *Terraza 8*, a recent arm's-length sale is not always the best evidence. A recent arm's-length sale, however, is still given strong weight.

Background

The taxpayer, Terraza 8, L.L.C. (Terraza), bought a fitness center in Franklin County in 2013 for \$15,403,200. The local school district filed a complaint with the Franklin County Board of Revision (BOR), which valued the property at the purchase price for tax years 2013 and 2014. Terraza appealed both years to the Ohio Board of Tax Appeals (BTA).

In its appeal to the BTA, Terraza introduced witness and appraisal evidence claiming the sale price did not reflect the unencumbered value of the property. Terraza argued that the property was "encumbered" by an above-market rent lease, which made Terraza willing to pay more for the property than the value of the *unencumbered* fee. Under R.C. 5713.03, as amended in 2012, an auditor *must*

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determine the value of a property as if *unencumbered* for tax purposes.¹ The pre-amendment statute stated that the auditor *shall* consider a recent arm's-length sale price as a property's value for tax purposes. Under the revised statute, however, the auditor *may* consider the recent arm's-length sale price as the property's value for tax purposes.

The appraisal introduced by Terraza valued the unencumbered property at \$7,055,000, less than half of the \$15,403,200 sale price. The appraisal used a sales-comparison approach for recently-sold similar—we assume *unencumbered*—property. Based on this, Terraza argued that the subject property value should not be determined by the sale price.

The BTA was not persuaded. Although the BTA acknowledged the amended version of R.C. 5713.03 applied in this case, it found that the amendment lacked impact. The BTA believed that the amendment did not overrule Ohio Supreme Court precedent in *Berea v City Schools Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979. In *Berea*, the court held that property must be valued according to a recent arm's-length sale. In other words, the BTA ignored the words of the statute and instead deferred to old case law. Terraza appealed to the Ohio Supreme Court.

Supreme Court's decision

The Supreme Court vacated the BTA's decision and remanded the case. In its opinion, the Court determined that the amended version of R.C. 5713.03 applied in this case because Terraza was appealing property values for 2013 and 2014, which were years after the statute's amendment. The Court further ruled that the statute overruled *Berea*, so that a recent arm's-length sale is not necessarily conclusive evidence of a property's value for tax purposes. Last, the Court held that the best evidence rule endured.

The best evidence rule requires that the party which opposes using the sale price as the proper value demonstrate, with rebuttal evidence, that the sale price does not reflect the unencumbered value. Therefore, if a party claims that the sale price should control, the BTA should allow rebuttal evidence from the other party that the sale price should not control—for example, because the property interest sold is an encumbered interest.

In this case, Terraza presented testimony and appraisal evidence to rebut the presumption that the recent arm's-length sale price reflected the property value. However, the BTA did not consider this evidence, incorrectly believing that the

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sale price was irrebuttable evidence. Thus, the Supreme Court vacated the BTA's decision and remanded the case to the BTA so the BTA could properly weigh all the evidence.

Although the Court held that rebuttal evidence can validly show that a sale price does not reflect a property's unencumbered value for tax purposes, the Court was careful to note that a recent arm's-length sale may still be very strong evidence of value.

Takeaway

Based on *Terraza 8*, a recent arm's-length sale price is not the only evidence to consider when determining property value for tax purposes, especially if the interest sold was encumbered. In other words, a recent arm's-length sale price is not conclusive evidence of a property's value. A party can present rebuttal evidence to argue that the sale price should not control. However, because the Court was careful to note that sale prices are still strong evidence when valuing property, it is likely that in most cases, a property's recent arm's-length sale will still dictate a property's value.

For more information or assistance, please contact [Mark Snider](#), [John Gleason](#), [Dave Tumen](#) or any member of Porter Wright's [Tax](#) or [Real Estate](#) Practice Group.

¹ A later statutory amendment requires the auditor to take into account government imposed encumbrances, such as encumbrances required by the low-income housing tax credit program and other types of affordable housing.