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Client Alert: Changes to Real Property Valuation Law Present Opportunities for Property Owners

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On June 11, 2012, Governor Kasich signed into law Am. Sub H.B. 487 (H.B. 487). That legislation includes changes to R.C. 5713.03, the section of the Revised Code that pertains to the valuation of real property in Ohio. The first major change in the statute in over 40 years, the amendment to R. C. 5713.03 clarifies what real property interest is to be valued and "legislatively reverses" recent Ohio Supreme Court precedent that dictated the acceptance of a sale price as value, even where there have been extenuating circumstances impacting the sale price. This change will present both opportunities and challenges to property owners in Ohio.

Interest to be Valued

Prior to H.B. 487, R.C. 5713.03 provided that each county auditor "was to determine *** the true value" of each parcel of real property. Under amended R.C. 5713.03, the law now specifies that it is the true value of "the fee simple estate, as if unencumbered" that is to be valued by the county auditor. The amendment appears to be a clarification of the law rather than a new standard. In older case law, the Ohio Supreme Court made it clear that Ohio values the fee simple estate. See, e.g., *In re estate of Sears* (1961), 172 Ohio St. 443; *Kroger Co. v. Hamilton Cty. Bd. of Revision* (1993), 67 Ohio St.3d 145; *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (2006), 112 Ohio St.3d 309.

A fee simple interest is one that is free of all encumbrances, including a lease. Yet, dicta in recent Ohio Supreme Court cases has suggested that a leased fee interest may, in some circumstances, be sufficient for valuation purposes. See, *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, and *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, 119 Ohio St.3d 563, 2008-Ohio-5203. The General Assembly's clarification responds to the Court's comments, making it certain that it is the fee simple interest, which can vary greatly from the leased fee interest, that is to be relied upon in deriving market value for real property taxation.

Sale Price

Since the mid-1970s, R.C. 5713.03 has specified that a county auditor "shall" consider the sale price of real property to be its true value. Traditionally, the Supreme Court interpreted this requirement to mean that a sale must be considered; however, the Court did not require that all sale prices be accepted. Rather, the Court understood that not all sale prices are reflective of market value. *Ratner v. Stark Cty. Bd. of Revision* (1988), 35 Ohio St.3d 26. A sale price may be impacted by other, non-property related, circumstances. One example is the sale-leaseback, which involves the leased fee interest where lease rates are traditionally significantly in excess of market rent. Such sales are generally financing arrangements that are not based solely on the value of the real property.

In 2005, the Supreme Court issued *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (2005), 106 Ohio St.3d 269, in which the Court concluded that all of its prior decisions impermissibly disregarded the plain language of R.C. 5713.03 that a sale price is to be considered the value of the property. Circumstances impacting the sale price were to be disregarded. The Court later went further, stating that a leased fee sale was also acceptable as the value of the real property. This has been interpreted by the Ohio Board of Tax Appeals to even allow for the use of sale-leaseback transactions to value the real property interest for taxation purposes.

With H.B. 487, R.C. 5713.03 no longer requires that a sale be automatically adopted as the value of the real property. The new language provides only that an auditor "may" consider a sale price as value. When combined with the "fee simple" language discussed above, the new standard for accepting sale prices means that a sale price must reflect the true value of the property's fee simple interest to be reflective of value.

New Opportunities and Concerns for Property Owners

The foregoing presents opportunities to those whose property has been valued higher than surrounding properties because their property is subject to an above-market lease or a recent sale that was used to value the property under the standards discussed above. No longer will some Ohio taxpayers be forced to pay more in taxes simply because their property is subject to an above-market lease. Sale prices can be reviewed to determine their relationship to the value of the real property's fee simple interest. On the other hand, the changes create a challenge to those who have been enjoying a lower value because they have a below-market lease or where the sale price was artificially low due to other factors not related to the property itself. Property owners must guard against aggressive boards of education that may seek to revisit prior tax reductions, and strategies must be pursued to defend against any potential increases in value. In addition, many questions remain because the legislation also contains an uncodified section that may create issues as to the timing of the implementation of the provisions. Vorys will continue to monitor the situation and address issues as they continue to develop.

If you have any questions about how the recent legislative changes may impact the value of your property, please contact your Vorys attorney.