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Recent Decisions: Taxation - Real Property - Assessment by Uniform Rule [*State ex rel. Park Investment Co. v. Board of Tax Appeals*, 16 Ohio St. 2d 85, 242 N.E.2d 887 (1968)]

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in the instant case represent a step — albeit a small one — in the right direction. One can only ponder the character and scope of the Court's next movement.

JOHN M. DRAIN, JR.

TAXATION — REAL PROPERTY — ASSESSMENT BY UNIFORM RULE

State ex rel. Park Investment Co. v. Board of Tax Appeals,
16 Ohio St. 2d 85, 242 N.E.2d 887 (1968).

State governments have long sought to attain the elusive goal of uniformity and equality in property tax assessment. Ohio has attempted to achieve this goal by establishing constitutional and statutory requirements with which the Board of Tax Appeals (BTA) must comply.¹ However, until recent judicial interpretation led to a more definitive answer, the precise scope of the uniformity requirement in Ohio was an open question. In 1966, *Goldberg v. Board of Tax Revision*² gave a partial answer by firmly articulating the principle that uniformity must be met within the county without regard to property classification.³ It was assumed that the county was the taxing district and that county-to-county variations in the assessment rate would be permissible. However, in its last pronouncement on the subject, the Supreme Court of Ohio held in *State ex rel. Park Investment Co. v. Board of Tax Appeals*⁴ (*Park*

¹ The BTA is a division of the Department of Taxation. OHIO REV. CODE ANN. § 5703.02 (Page 1953) [hereinafter cited as CODE]. It exercises vast authority with respect to determining tax assessments and valuations and has the power to correct any discriminatory valuations that are brought to its attention. *Id.* at § 5717.03. In addition, the BTA has the responsibility to adjust any inequities that it discovers on its own initiative. *Id.* at § 5715.24.

² 7 Ohio St. 2d 139, 218 N.E.2d 723 (1966).

³ The basic classifications of property used in Ohio are agricultural, industrial, commercial, residential, and vacant land. BTA R. 5-05 (Baldwin 1969). The divisions are logical, but their usefulness has been obscured since *Goldberg*. The BTA rules suggest that such classifications indeed serve useful functions; however, the question of whether they may be used apparently has been answered in the negative.

The purpose of the classifications is to permit local assessors to consider a number of factors when evaluating the worth of a parcel of land. For example, the availability of nearby parking facilities certainly should be considered when assessing the value of commercial property, but it has no relevance when working with the value of agricultural lands.

⁴ 16 Ohio St. 2d 85, 242 N.E.2d 887 (1968).

II) that the Ohio constitution and statutes require that uniform rates be applied throughout the state.

Park Investment Company, a commercial taxpayer, brought a mandamus action against the BTA asserting that the Board continually failed to comply with the state's statutory mandate⁵ since it neglected to assess property within the state at a uniform percentage of its true value in money.⁶ To illustrate the failure, Park submitted sales ratio studies⁷ indicating that throughout the state all property was being assessed at an average rate of 38.78 percent of its true value,⁸ while Park's property in Cuyahoga County was assessed at 42.9 percent of its true value.⁹ In granting the writ of mandamus, the court considered more than Park's right to the writ and held that the duty of the BTA was to provide not only county-wide uniformity within the same class of property, but also *uniformity between the counties*.¹⁰

The rubrics for the BTA to follow in assessing property arise from constitutional and statutory sources. The Ohio constitution and statutes provide an obscure standard. The relevant provision of the Ohio constitution states that "land and improvements thereon shall be taxed by uniform rule according to value."¹¹ In assigning the BTA's duties, the Ohio statutes require that taxable value¹² shall be such "that every class of real property shall be listed and valued for taxation by an equal and uniform rule."¹³ It is also provided that upon finding an overvaluation or undervaluation of any class in any county, the BTA shall have the power to increase or de-

⁵ CODE § 5715.24 (Page Supp. 1968).

⁶ 16 Ohio St. 2d at 85, 242 N.E.2d at 888. The Cuyahoga County Auditor, Ralph J. Perk, primarily responsible for the assessment, was also named as a party defendant.

⁷ Sales ratios are computed by adding actual sales prices of a given number of parcels, then comparing this total to the parcels' total assessed value.

⁸ It should be noted that the figure of 38.78 percent is based on 1962 studies. Park also presented ratio studies for Cuyahoga County which were compiled in 1965. 16 Ohio St. 2d at 85, 242 N.E.2d at 888.

⁹ Brief for Respondent BTA at 5, State *ex rel.* Park Inv. Co. 16 Ohio St. 2d 85, 242 N.E.2d 887 (1968).

¹⁰ For a description of the authority under which the BTA may take remedial action, see note 1 *supra*.

¹¹ OHIO CONST. art. XII, § 2.

¹² Taxable value is computed as follows: First, the property is assessed at its actual worth on the market, considering all relevant factors, then the assessment percentage is applied to this figure giving a taxable value. To the taxable value is applied the millage (10 mills = 1 percent) for both state and local taxation. Taxable value in Ohio may not be more than 50 percent of actual value. CODE § 5715.01 (Page Supp. 1968).

¹³ *Id.* at § 5713.01 (Page Supp. 1968).

crease the aggregate value of such a class in order to meet the statutory requirements.¹⁴

Uniformity and equality in tax assessment is also required by the 14th amendment to the United States Constitution. However, the equal protection required by this amendment is not violated unless there is a grossly inequitable deviation from a uniform rule. The United States Supreme Court, recognizing the need for practical uniformity, has not required exact equality with regard to all property assessments.¹⁵ In fact, because of an apparent need for flexibility in assessment mechanisms, the Court has been reluctant to enter this area unless there has been patently obvious discrimination caused by an intentional or arbitrary rule of the state or one of its agencies.¹⁶

Additional limitations on the BTA come from Ohio Supreme Court decisions interpreting statutes related to the Board's duties. In a series of cases, the court has refined the definition of uniformity and what the BTA's duties are with respect to the implementation of this standard. It may well be that the recent *Park II* case has supplied the key to this definition with regard to the degree of uniformity which the court will require.

In the earlier *Park I*¹⁷ proceeding, the court held that the BTA has a statutory duty to review the assessments *within any county*, and if it finds discrepancies existing as a whole or as to the various classes of property it must equalize them. The court held, therefore, that "[a]ll property, whether commercial, residential or vacant, must be assessed on the basis of the same uniform percentage of actual value."¹⁸

It is clear from *Park I* that there can be no differentiation between various classes of property. It is not clear, however, whether a differentiation *between counties* in rate of assessment is permissible. While the court did not expressly hold that there is a *state-wide* uniformity requirement in *Park I*, it did speak in terms of rela-

¹⁴ *Id.* at § 5715.24 (Page Supp. 1968).

¹⁵ *Township of Hillsborough v. Cromwell*, 326 U.S. 620 (1945).

¹⁶ *See Souix City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923).

¹⁷ *State ex rel. Park Inv. Co. v. BTA*, 175 Ohio St. 410, 195 N.E.2d 908, *cert. denied*, 379 U.S. 818 (1964). After this decision the BTA directed the Cuyahoga County Auditor to reduce all commercial and industrial property by an aggregate of 15 percent in order to have a uniform rule. Park's property had been assessed at 80 percent of its true value which was then reduced to 42.9 percent. Brief for Respondent BTA at 5.

¹⁸ 175 Ohio St. at 413, 195 N.E.2d at 911 (1964).

tive uniformity throughout the state.¹⁹ In a later effort to clarify this concept, the court held that all property regardless of class be assessed at one value.²⁰ Again, the court failed to address itself to whether statewide uniformity was required. Thus, although prior cases clearly established that property classification and the resultant variations in assessment rate within a county would no longer be permitted, the permissibility of county-to-county variations remained unresolved.²¹

Park II arose upon a demurrer to a petition for a writ of mandamus; thus, the question presented was essentially procedural. Simply stated, the issue was whether Park Investment stated a cause of action in its petition. Both of the respondents' briefs deal extensively with this question almost to the exclusion of the substantive issue.²² Nevertheless, the supreme court chose instead to define the duty of the BTA:

The question which this case presents is: Do sections 5715.01 and 5715.24, Revised Code, and Section 2 of Article XII of the Ohio Constitution and Section 1 of the Fourteenth Amendment of the United States Constitution, require statewide uniformity in assessment of real property for taxation?²³

By thus formulating the question and expressly answering in the affirmative, it appears that the court now considers statewide uniformity to be both a constitutional and a statutory requirement.

The court's choice of *Park II* as a vehicle to reach such a conclusion is unfortunate. The issues presented were essentially proce-

¹⁹ *Id.*

²⁰ *Koblentz v. Board of Rev.*, 5 Ohio St. 2d 214, 215 N.E.2d 384 (1966).

²¹ *Goldberg v. Board of Rev.*, 7 Ohio St. 2d 139, 218 N.E.2d 723 (1966), another Cuyahoga County case, was consolidated with *Koblentz* and then reappealed individually on the question of whether the BTA had acted as the court instructed in *Koblentz*. The BTA continued to differentiate between classes of property, but the court reemphasized the principle that such differentiation was not allowed. The companion case of *Frederick Bldg. Co. v. Board of Rev.*, 7 Ohio St. 2d 142, 218 N.E.2d 724 (1966), was also reversed per curiam, citing *Goldberg*.

²² Both the brief for the BTA and the brief for Cuyahoga County Auditor Ralph J. Perk were specifically directed toward the question of whether there was an adequate remedy at law which Park must pursue. It was asserted in both briefs that section 5715.19 of the Code afforded Park relief, and, thus, it was improper to maintain an equitable action for mandamus. Brief for Respondent BTA at 4-5; brief for Respondent Perk at 7, 16 Ohio St. 2d 85, 242 N.E.2d 887. In the brief for respondent Perk, only slight mention was made of the substantive question. "It would appear that the key to the solution of assessment problems, therefore, is a uniform percentage to be applied to each and every parcel. . . . Perhaps this is a matter for legislative consideration . . ." *Id.* at 11.

²³ 16 Ohio St. 2d at 86, 242 N.E.2d at 888. *Phelps Realty Co. v. Board of Rev.*, 16 Ohio St. 2d 83, 243 N.E.2d 97 (1968), decided the same day, also held that the Board had a duty to assess at a statewide uniform rate and cited *Park II*.

dural and, as a result, the litigants primarily directed their arguments to the procedural questions. Thus it was without benefit of full argument that the court rendered its decision on the substantive issue of statewide uniformity. Further, the court's two-page per curiam opinion is insufficient to fully delineate the basis for the decision.²⁴ In view of the debate generated by the issue, it would appear that the court's decision to require statewide uniformity was worthy of more comprehensive discussion than the court gave it.²⁵

An issue unresolved by the court concerns the result likely to flow from the loss of revenue caused by statewide uniformity. A rather immediate consequence is that revenues will have to be equalized by the alteration of valuation. For example, assume that Franklin County has an assessment of 45 percent and that its budget is based on this percentage.²⁶ Then the BTA, under the new requirements, finds that the average rate throughout the state is 38 percent and accordingly applies this to Franklin County. The county has now lost 7 percent of its assessment which is the equivalent of a 15.6 percent decrease in revenue. This can be made up by higher valuations on the property, but such action goes against the true value concept set forth in the statutes.²⁷ An alternative is to increase the millage rate on each piece of property. However, this would require a very significant increase in the millage rate. Considering that all increases in the millage rate must be submitted to voter approval²⁸ and that there have been considerable difficulties in passing any increase of this nature in Ohio, *i.e.*, the recent failure of local school levies, the perils of relying upon such an alternative are obvious.

Whether statewide uniformity is desirable depends upon the individual state, its goals, and its overall concept of taxing symmetry.

²⁴ In 1964, the Supreme Court of Minnesota was faced with a similar problem. In a 15-page well-substantiated opinion, the court explained why statewide uniformity was required and deferred implementation of the matter to the legislature. *Dulton Realty, Inc. v. State*, 270 Minn. 1, 132 N.W.2d 394 (1964). In another similar situation, the Kentucky Court of Appeals, recognizing that immediate compliance was impossible, held that there must be compliance within approximately one year. *Russman v. Luckett*, 391 S.W.2d 694 (Ky. Ct. App. 1965).

²⁵ See *The Plain Dealer* (Cleveland), Feb. 2, 1969, at 1, col. 5.

²⁶ After the assessment has been made on the property, this figure is then used for applying the millage for both state and local taxation. OHIO TAXATION 28 (C. Glander ed. 1967).

²⁷ This would be contrary to the recent holding of the supreme court that the old practice of allowing a plus or minus 10 percent variation in valuation is *prima facie* discriminatory. *Frederick Bldg. Co. v. Board of Rev.*, 13 Ohio St. 2d 59, 233 N.E.2d 594 (1968). See generally OHIO TAXATION, *supra* note 26, at 25.

²⁸ CODE § 5705.07 (Page 1953).

Only 27 states require such uniformity.²⁹ Others allow flexibility among counties or have a detailed taxing system.³⁰ In Ohio there is a need for *some* measure of flexibility in the allocation of the tax burden among counties.³¹ This need is reflected by the fact that Ohio is beset with large differentiations in population size and the amount of required governmental services between the northern industrial counties and the predominantly rural areas of the south. The theory of statewide uniformity is premised upon the belief that mere variances in location caused by invisible and arbitrarily drawn county lines are not valid reasons for applying different tax percentages. However, the unique distribution of population and industry in Ohio suggests a need for flexibility in tax assessment which contrasts sharply with the reasons underlying the uniformity rationale. In fact, rather than applying a uniform rate of assessment as required by *Park II*, Ohio could well benefit from a much different plan of real property taxation. Such a plan need not entail varying percentages from county to county, but instead it could be implemented by applying a detailed statewide system of different percentages for different classes of property.³² Such a system exists in other states³³ and a similar one could be provided for in Ohio. But, it appears that this would require a complete legislative reappraisal of the system of property taxation with subsequent revision of the tax statutes currently in force.

²⁹ A survey of 49 states (not including Ohio) indicates that 27 have a uniform rate of taxation. Sixteen states have these rates locally set. Six states have a uniform rate which is very detailed with respect to classifications. These are Arizona, Kentucky, Louisiana, Minnesota, Montana, and West Virginia. See CCH STATE & LOCAL TAX SERV. ¶ 20-200-20-964 (1968).

³⁰ For an example of this detailed plan, see note 32 *infra*.

³¹ For state tax purposes, a county which is basically rural and does not need great financial aid from the state government will still have to contribute the same amount, under statewide uniformity, as will a county that is largely urban and is a considerable expense to the state. The "deeper pocket" theory of taxation would indicate that equality is achieved by taxing more heavily those counties which use the state's services than those which do not. To an extent, this would cut down on the inherent regressive nature of the property tax. However, one of the biggest problems with local taxation is the multi-county school districts. It would seem that some equalization must be attained to solve the problem. See Note, *Inequality in Tax Assessments — Multi-County School Districts Add New Emphasis to an Old Problem*, 11 S.D.L. REV. 119 (1966).

³² Arizona has adopted such a system of detailed classification and assessment. There are four class divisions. Class 1 contains railroads, mines, etc., which are taxed at 60 percent. Class 2 contains utilities which are taxed at 40 percent. Class 3 contains all commercial and industrial property not covered in 1 and 2 and is taxed at 25 percent. Class 4 contains personal residences and agricultural areas and is taxed at 18 percent. ARIZ. REV. STAT. ANN. § 42-136 (1968).

³³ See KY. REV. STAT. § 136.120 (1968); MINN. STAT. ANN. § 273.13 (1969); MONT. REV. CODE ANN. §§ 84-301, -302 (1966).

The alternative to a legislative overhaul of the system is for the BTA to take the initiative in implementing a standard complete with some built-in measure of flexibility. The question, then, becomes whether the BTA can operate under the mandate of *Park II* and attain flexibility. Section 5713.01 of the *Ohio Revised Code* requires "that every class of real property shall be listed and valued for taxation by an equal and uniform rule."³⁴ An analysis of this provision suggests two possible means by which flexibility might be achieved.³⁵ It may be effectuated either by altering the aggregate values of property or by changing the percentage assessment within a county. Since *Park II* has expressly eliminated the possibility of any changes in the percentage of assessment, the BTA is limited to the alteration of aggregate values of property. Admittedly the BTA has the discretion to manipulate aggregate values to meet the statutory requirements of uniformity and equality,³⁶ and in the past the courts have not disturbed the BTA's exercise of discretion unless there has been patent abuse thereof.³⁷ However, in light of the present concept of uniformity as seen in the court's ultimate resolution of the assessment percentage issue in *Park II*, it would seem that any attempt to achieve flexibility by such value manipulation would be proscribed. In fact, the *Park II* court's articulation of statewide uniformity in rate of assessment could be interpreted to mean that any idea of flexibility in the allocation of the tax burden has been rejected. Therefore, legislative action is apparently the only avenue by which flexibility may be achieved.

Even if strict uniformity is desirable for Ohio's system of real property taxation, a further question is raised as to the propriety of the judiciary establishing the standard. The entire subject of uniformity is in need of much study, and the legislature, with its fact-finding facilities, would seem best suited for the task. Given the Ohio Supreme Court's decision that uniformity is constitutionally required, the court still could have implemented its determination

³⁴ CODE § 5713.01 (Page Supp. 1968).

³⁵ The pertinent part of CODE § 5713.01 (Page Supp. 1968) is:

[The auditor] may increase or decrease the value of any lot or parcel of real estate in any township, municipal corporation, or other taxing district by an amount which will cause all real property on the tax list to be assessed at its taxable value, or he may increase or decrease the aggregate value of the real property . . . by a percent or amount which will place such property on the tax list at its taxable value so that every class of real property shall be listed and valued for taxation by an equal and uniform rule.

³⁶ See text accompanying note 14 *supra*.

³⁷ *E.g.*, *Benedict v. Board of Rev.*, 170 Ohio St. 62, 162 N.E.2d 479 (1959); *American Steel & Wire Co. v. Board of Rev.*, 139 Ohio St. 338, 40 N.E.2d 426 (1942).

by seeking legislative guidance. For example, the Minnesota Supreme Court, faced with a similar problem in *Dulton Realty, Inc. v. State*,³⁸ was convinced that "inequality between counties is as much a violation of constitutional requirements as is inequality within a county"³⁹ and held that statewide uniformity was required. However, rather than simply announcing its decision and remaining silent with regard to the problem's practical solution, the *Dulton* court sought legislative guidance by deferring to the legislature for implementation of its decision. By contrast, the Ohio Supreme Court's action thrusts upon the BTA the burden of devising and promulgating a scheme which conforms to the court's mandate. At the same time, however, the court has severely limited the alternatives the BTA may utilize in implementing such a standard. "So as the BTA wrestles with its problems, county auditors and taxpayers can hold their breath. Only the seven judges of the Ohio Supreme Court seem unruffled by all the trouble they have caused."⁴⁰

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³⁸ 270 Minn. 1, 132 N.W.2d 394 (1964).

³⁹ *Id.* at 10, 132 N.W.2d at 406.

⁴⁰ *The Plain Dealer* (Cleveland), Feb. 2, 1969, at 16, col. 8.