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CCAP COUNTY COMMISSIONERS ASSOCIATION OF PENNSYLVANIA
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PA Supreme Court Decision in Tech One: Road Map to Uniformity

By Sharon F. DiPaolo

For years, Pennsylvania assessors and assessment lawyers have been watching and waiting for our Supreme Court's decision in the case of Tech One Associates. The wait is over. On April 25, 2012, the Pennsylvania Supreme Court issued its ruling in Tech One Associates v. Board of Property Assessment Review and Appeals of Allegheny County, 32 WAP 2010 (2012), changing 20 years of practice regarding how leased real property is valued throughout Pennsylvania for purposes of taxation. In short, the Supreme Court ruled that where real estate interests are divided, all interests must be valued to arrive at the whole for purposes of real estate taxation.

To understand why this seemingly common sense ruling became necessary, it is useful to look at the factual background and valuation issues presented by the Tech One case and by the Court's 1992 decision in Marple Springfield, v. Board of Assessment Appeals of Delaware County, 607 A.2d 708 (Pa. 1992).

WHERE WE'VE BEEN: A LOOK BACK AT MARPLE

The Marple case concerned the valuation of a 200,000 square foot shopping center subject to a 75-year lease at a constant rent of $1.47 per square foot. In the assessment trial, the taxpayer presented an appraisal using the actual rent generated by the lease, whereas the taxing districts used market rent. The case was appealed all the way to the Pennsylvania Supreme Court which defined the issue in the case as to whether contract rent or market rent should be used to arrive at the "actual value" for real estate taxation. In its ruling in favor of the taxpayer, the Marple Court issued the oft-cited rule that the "economic realities," of the property, i.e., the contract rent must be considered in valuation.

For twenty years, Pennsylvania's lower courts, assessors and practitioners on both the taxpayer and taxing district sides interpreted Marple to mean that, for leased real property, just the leased fee interest should be valued for tax assessment purposes. In practice, this meant that properties across one class – for example, retail properties - were being taxed unevenly depending on how their leases were structured.

WHERE WE ARE: THE FACTS OF TECH ONE

In Tech One, the taxpayer challenged the $30 million assessment of a 400,000 square foot shopping center in the suburbs of Pittsburgh. The center sits on 50 acres of land, which is leased to the tenant, Tech One Associates, at a flat rent of $665,000 for a 50-year term. The tenant constructed the improvements, from which the landlord received no income. At trial, taxpayer interpreted Marple to mean that only the leased fee interest needed to be valued, and entered into evidence an appraisal of the leased fee interest at $9.5 million. The taxing districts, on the other hand, asked their appraiser to value both the leased fee interest and the leasehold interest; their appraiser opined values of $9.3 million for the leased fee and a range of $22 million to $36 million for the leasehold, and then aggregated to arrive at a total value. Because the appraisers essentially agreed on the leased fee value, the issue in the case was whether or not the leasehold interest should be valued.

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Ideas for You

CHECK THE TIME BEFORE YOU CRITICIZE

It's not only *what* you say and *how* you say it that you must consider; it's also *when* you say it. You can praise a employee any time and it will always be welcome. But before you offer criticism, ask yourself: *Is this the best time?*

If an employee is up to his elbows in a complicated task or project, let him finish. If an employee is about to leave on a three-day weekend, wait until she gets back. You want the individual to accept the criticism and use it to improve performance. Yet in each of the examples cited, your input will likely become a momentary distraction - and a lasting morale-killer. Choose a time when the employee can fully concentrate on what you have to say.

HOW FAR WILL YOU BEND?

Before meeting with employees to kick off a new project or initiative, you should have an idea in your head of the schedule you want. But don't get locked into it. What seems realistic to a manager might seem outrageous to the people who actually do the work. So go to the meeting with *two* dates in your head: the one you want and the one you can live with. If you're not willing to bend, you employees will view you as unreasonable. And the more you work with them, the better they will work for you.

Adapted from Communication Solutions.

What's Inside

President's Message, Annual Conference Recap, Legislative Update, AAP People

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President's Message

Happy summer to all -

First, let me thank all of you for the chance to serve you and this great organization. It is an honor to be your President for the next year. Let's all work together to make it a great year.

The Conference Planning Committee met on July 12, 2012 to plan our Fall Conference in State College. The Planning Committee has always done a great job, finding topics and speakers which would be of interest to all of you. There is always room for association members' ideas and suggestions for classes and speakers.We are an education organization and would welcome any input on classes or speakers.

I am working with an instructor for a new class and the instructor has told me that the class that I am requesting would be a six hour class…… that may seem long but I have shared this with other members and have had great responses. So one and all, please participate and help us run the AAP together.

If you have an interesting topic or a new speaker, please contact the AAP staff (Terry Cochran or Lori Lawyer), the officers of the AAP, the Education Chairs (Steve Howe or Randy Waggoner) or myself with any class ideas and speakers.

We take your suggestions, input and comments on your conference evaluation forms very seriously. Unfortunately, the Conference Planning Committee has little to do with the food served, the temperature of the classrooms or the entertainment that is available.

I think about one of Randy's favorite sayings, "that the conferences are a great way of networking." There is usually a spot to gather and share what is going on throughout all of our counties, so let's get to know each other and learn, and make new friends by attending our state conferences..

Have a great summer.

Cris

Cris Savage, CPE
AAP President



Legislative Update

By Jonathan B. Schuck, Chair
Government Information Committee and
Assistant Director of Assessment/Tax Claim, Chester County

Greetings fellow assessment professionals throughout the Commonwealth of Pennsylvania. By the time you receive this issue of the AAP Journal, we will be in the midst of summer. Both the weather and assessment-related legislative activity have been heating up after a mild and tepid winter/spring season.

During the first eighteen months of the 2011/2012 Session, more than 80 bills have been introduced and three enacted. As we push toward the last six months of the Session, a host of legislation is on the table. Following is a summary of bills with recent activity by category:

ASSESSMENT REFORM

House Bill 1776

This act would allow school districts to put forth a referendum which, if passed, would establish a personal income tax or an earned income tax and eliminate the real property tax. It would implement a 7% sales and use the tax for the stabilization of education funding. It is a companion to Senate Bill 1400. Bill is currently in House Finance Committee as of April 10.

House Bill 2137

This bill is nearly identical to the vetoed House Bill 1696. It would forbid local taxing authorities from undertaking a court ordered county-wide reassessment for property taxes until a) the General Assembly has enacted legislation to foster uniformity and protect property owners from large increases or b) December 31, 2013. Passed 189-0 on April 4 and currently in Senate Finance Committee as of April 10, 2012.

House Bill 2230

This amendment allows a wide range of counties, cities, boroughs, towns, townships and school districts to levy sales, use or occupancy taxes in order to reduce the property tax millage. Currently under consideration in the Finance Committee as of April 3, 2012.

House Bill 2404

This amendment would allow second class counties to eliminate real property assessments and real property taxes by the county and within each political subdivision of the county. The revenue would be replaced by an earned income and net profits tax or a personal income tax or a sales and use tax or a fee per square foot on real property or any tax authorized under the Local Tax Enabling Act. It is a companion to Senate Bill 1462. Currently in Local Government Committee as of May 23, 2012.

Senate Bill 1502

This act would allow counties to impose a sales, use and occupancy tax of 1% in order to reduce real property taxes. Counties that do this would no longer be able to collect occupation tax or a per capita, poll, residence or head tax. No less than 60% of the revenue collected through this new tax must be used to offset the revenues lost from the prohibition of the occupation tax or a per capita, poll, residence or head tax and then to reduce the county real property tax. Currently in Finance Committee as of May 11, 2012.

HURRICANE IRENE/TROPICAL STORM LEE TAX ABATEMENT

House Bill 1913

This act would allow taxing bodies to abate the tax year 2011 property taxes for properties damaged by Hurricane Irene and Tropical Storm Lee. The reduction would be effective retroactively to January 1, 2011 and properties that have already paid would be eligible for refunds. The amount abated or refunded is not to exceed $30,000. The act also allows for a graduated three year exemption for reconstruction or repairs. It is a companion to Senate Bill 1267. Passed 196-0 on March 27 and currently in Senate Appropriations Committee as of May 23, 2012.

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Article submissions are welcome.
Please send to:
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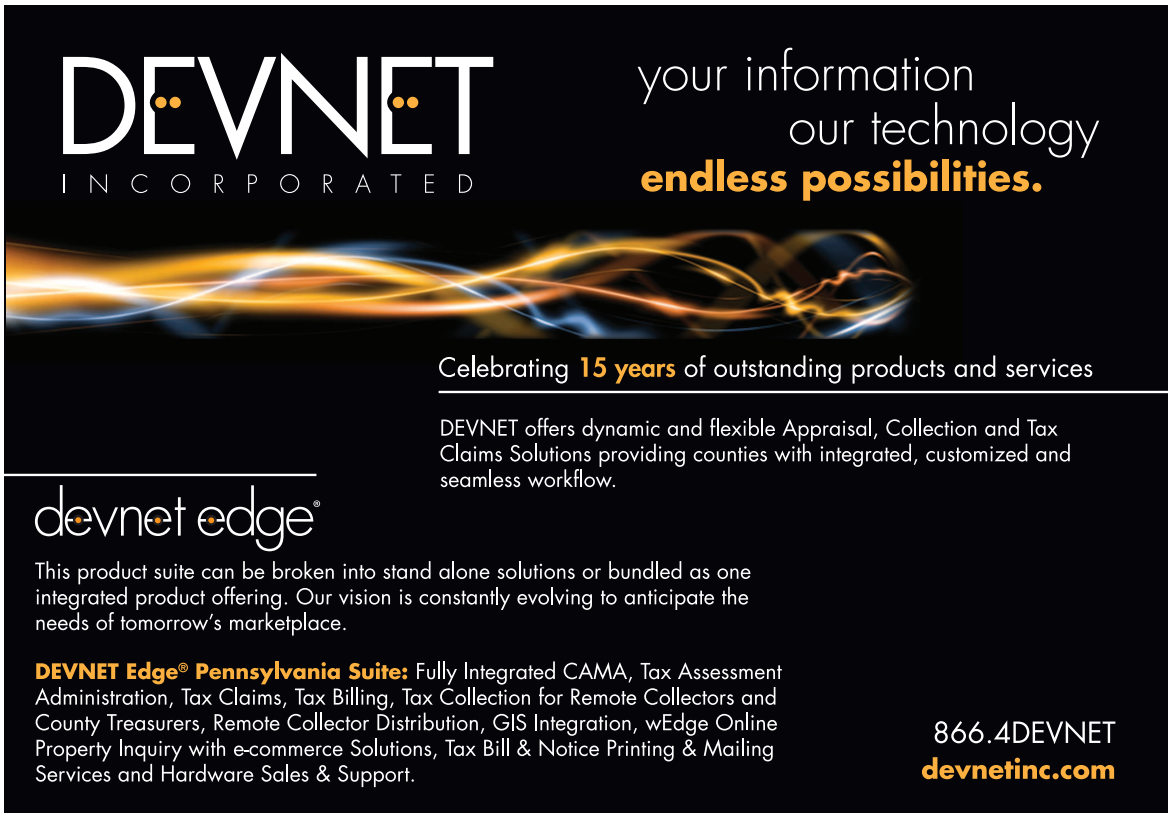
Tech One - Continued from Page 1

The trial court ruled in the taxing districts' favor, deciding that both leased fee and leasehold interests must be valued. The Commonwealth Court affirmed. The Supreme Court took the case and heard oral argument on April 13, 2011. The issue in the Tech One case was whether the leasehold must be valued. On April 25, 2012, the Supreme Court issued a 34-page opinion, ruling that "[w]here … ownership of taxable real estate which comprises one tax parcel is divided into leased fee and leasehold interests, [the statute] still requires that the market value of the real estate as a whole be determined." Tech One at 31. In so holding, the Court cited its own prior decisions stating that real estate to be assessed "means the entire property and not merely its constituent elements," North Park Village, 184 A.2d 253 (Pa. 1962) (emphasis in original), and "[e]vidence presented must be directed to the market evidence as a whole," Rieck Ice Cream, 209 A.2d 383 (Pa. 1965). The Supreme Court reconciled Marple by pointing out that Marple did not preclude valuation of the leasehold interest, and further that Marple's requirement to consider the economic realities of the contract rent remains good law. Presented with the valuation evidence entered in the Tech One case, the Supreme Court approved the taxing district's methodology of arriving at the value of the whole by aggregating the leased fee and leasehold interests. An interesting footnote that did not become evidence in the trial because it occurred afterwards is that post-trial Tech One Associates sold its leasehold interest for approximately $18 Million.

WHERE WE ARE HEADED: CONSTITUIONAL UNIFORMITY

The Tech One Court ruled that all interests in leased real property must be valued and added together to arrive at the actual market value on which the property should be assessed and taxed. In so doing, the Court moved Pennsylvania closer to the rule in most other states which value the fee simple, or the entirety of the rights in a piece of property, when valuing properties for taxation. In an assessment appeal, evidence of leased fee and leasehold values should be prepared for leased properties. Because, as a practical matter, assessors frequently do not have access to the lease, assessors can arrive at the value of the whole by using a fee simple approach. On a practical level, Tech One will result in the taxing of leased real property on a more uniform basis, by valuing all properties on the same basis regardless as to how the ownership interests may be divided and, thus meeting Pennsylvania's Constitutional requirement of uniformity in taxation.

Sharon F. DiPaolo is a partner with Siegel, Siegel, Johnson & Jennings, Co., L.P.A. and manages the firm's Pennsylvania practice. She concentrates her practice in representing commercial taxpayers on property tax issues. The firm is a founding member of the American Property Tax Counsel (APTC), a nationwide group of property tax attorneys with local relationships and expertise, serving taxpayer needs throughout the United States and Canada. Ms. DiPaolo represents taxpayers in assessment appeals throughout Pennsylvania's 67 counties at the administrative, trial court and appellate levels.



AAP Annual Conference Recap

Over 200 county assessors, vendors and staff gather in Seven Springs in May for the AAP Annual Conference. On this year's agenda there was plenty of education, chances to meeting with exhibitors awards and networking for county assessment officials.

AWARDS

On Thursday evening the Award Committee (John Mavrides (Lancaster County), Anne Teal (Perry County) and Kelli Orlando (Northampton County) handed out the following awards:

- The **Naessig Award** went to **Randy Waggoner**, Perry County for consistently going above and beyond in his efforts to support both the assessment profession and the AAP.
- The **Hanisits Award** was awarded to **Eric Brown**, Wyoming County for offering his knowledge without hesitation and being a resource for his peers on Clean and Green and Oil and Gas issues.
- **Joan Righter Price**, Esquire, Montgomery County received the **Chudy Award** for writing the best assessment article in the *AAP Journal* newsletter.
- The **Garrity Award** recipient was **Chris Savage**, Butler County. Chris was awarded a one-year membership in the International Association of Assessing Officers (IAAO).
- Two **Special Awards** were given out to **Ed Rupert**, Butler County, and **Eric Brown,** Wyoming County, for truly outstanding efforts and hard work on behalf of the Association.

NEW AAP BOARD

At the end of the evening on Thursday President Steve Howe turned over the gavel to Chris Savage, Butler County who became the new AAP President. President thanked the board and chapter representatives for all of their hard work on behalf of the AAP and wished Chris much success.

The results of the election earlier that day were announced –

- President Elect – Anthony Alu, Luzerne County
- Vice President – JR Hardester, Lawrence County
- Treasurer – Melissa Border, Bedford County
- Secretary – Angelia Tennies, McKean County

The new board members for 2013 -14 from each chapter were also announced -

- Laurel Mountain - Christina Roland, Westmoreland County
- North Central - Deborah Crawford, Tioga County
- North East Chapter - Sherri Spolsky, Monroe County
- North West Chapter - Rebecca Broad, Armstrong County
- South Central Chapter - Tanya Kipp, Lebanon County
- South East Chapter - Francis Unger, Lehigh County

Years of Service Awards recipients and the new CPEs can be found on Page 7

AAP People

North West Chapter

The following members of the North West Chapter received their CPE licenses - **Michael "Curt" Kiefer**, Forest County, **Diane MacTavish**, Clearfield County and **Michelle Jackson**, Cambria County.

North East Chapter

Paulette Sebring, Asst. Chief Assessor, Monroe County, proudly welcomed her first grandchild, Avery Sebring Landro on March 18. Avery was seven pounds, one ounce and 20 inches long.
We will miss **Eric Brown**, Chief Assessor, Wyoming County, who retired on June 30. Congratulations, Eric!

South Central Chapter

Get well soon wishes to **Steve Howe**, Immediate Past President, Dauphin County who had knee replacement surgery in May. We hope he's healthy enough for USPAP in the fall!

South East Chapter

More get well wishes to **JP Fox, III**, Berks County for continued recovery from recent surgeries.

Contact Us With Your Chapter and County News!

Don't forget to send your important news for the next *AAP Journal*. Our next deadline is September 7. Please send all your news to Terry Cochran at *tcochran@pacounties.org*.

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Steve Gallo
Commercial/Industrial Assessor
Allegheny County

Year in assessment field: 10

Marital status and family: Married and have two sons, (Carole, Zac and Theo)

What irritates me most in the assessment business: People who are trying to get over on the system

Most people would be surprised to know: I was a luthier for Martin Guitars in Nazareth, PA

Biggest challenge as an assessor: Trying to explain an error to an outraged taxpayer; however, correcting mistakes is usually enjoyable.

First Job: Usher at the Dennis Theater.

If I couldn't be an assessor, I'd be: Building custom guitars.

If I won millions in the lottery, I would: Pay for my kids' educations up front, donate big time to my church's missions fund, and start a guitar company.

Favorite food and drink: Garlic roasted leg of lamb with wild rice and au gratin potatoes; Favorite drink would be fresh carrot, apple and ginger juice.

Favorite vacation: Key West, Florida

Favorite movie: There are a lot of great ones out there; two of my favorites are 'Captain Corelli's Mandolin' and 'Wild Hogs'

Three people living or dead that I would invite to dinner: Paul McCartney, Eric Clapton and my father, Demetri, who I never got the chance to meet.

The hardest lesson I ever learned as an assessor was the time: I got called 'the bad guy' at a hearing by the hearing officer because I had added two apartment buildings that had been missing from the system for twelve years.

If I could live in the past for one day, I would change . . . Try to talk Eve into not eating that apple.

My best friend: Dave Sipe, November 7, 1953 - October 22, 2011; We were best friends since our teens amd I am still in the process of missing him real bad.

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MEMBERABILIA

Legislative Update continued from page 3

OTHER

Act 16 (Senate Bill 1237)

Adds conditions to the Keystone Opportunity (Expansion/Improvement) Zone Act whereby exemptions can be extended for unoccupied parcels. It also allows for the designation of up to fifteen additional zones under the conditions given. It gives conditions under which applications can be submitted for additional zones or for the expansion of an existing zone. Approved by the Governor February 14, 2012.

House Bill 84

This amendment would repeal Section 11 and require assessors of counties of the first class to become certified within three years of the passage of the amendment. Passed 182-0 on May 2, 2012.

Senate Bill 1298

This amendment adds "any land devoted to composting or used for nutrient management" to the list of things which can be enrolled under "agricultural use" in Act 319. It also provided definitions for these two new types. Passed 48-0 on March 26 and currently in House Agriculture and Rural Affairs Committee as of March 27, 2012.

Senate Bill 1301

This amendment to Title 53 would add a section to the definition of "board" to include "The body with the responsibility of making assessments of real property in a city of the first class." Passed 48-0 on March 6 and currently in House Urban Affairs Committee as of May 9, 2012.

Upcoming AAP Conferences

2012 Fall Conference
November 15 -16
Penn Stater Conference Hotel
State College

2013 Annual Conference
April 24 - 26
Seven Springs
Mountain Resort

Other Award Winners

Trailblazer Awards
(20 - 29 Years of Service)

Name/County	*Years of Service*
Maryann Ace, Northampton County	21
Melinda Brubaker, Bradford County	22
Charles Cranmer, Butler County	22
James Gustas, Schuylkill County	20
Thomas J. Hill, Monroe County	20
Belinda Little, Adams County	22
Melody Petersheim, Lancaster Co.	21
Cindy Yoder, Bradford County	22

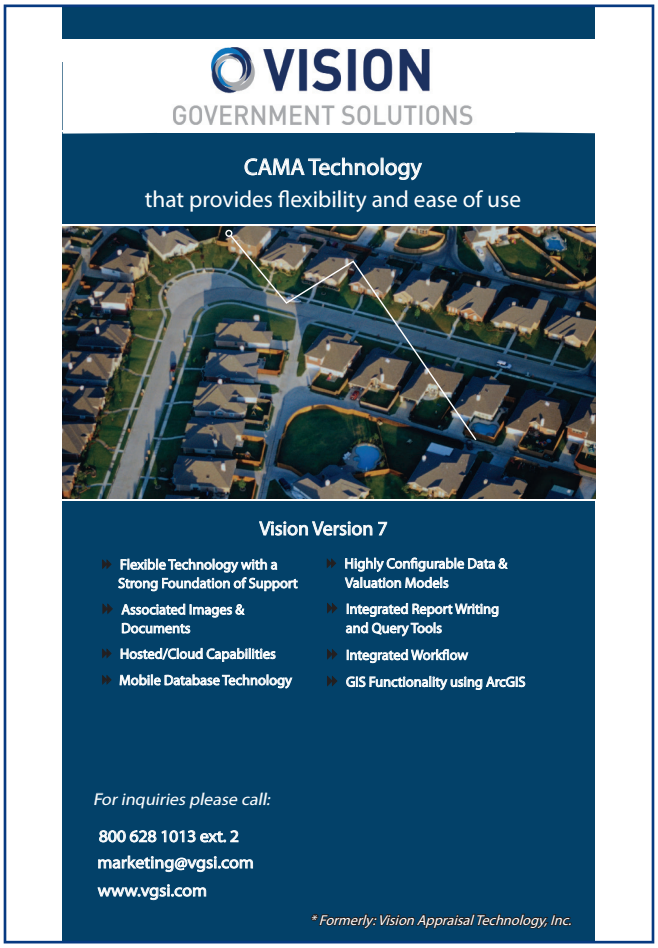
Board of Governors Awards
(30 - 39 Years of Service)

Name/County	*Years of Service*
Sandy Cupper, Crawford County	33
Cheryl Johnson, Northampton County	33
Edward Rupert, Butler County	30

New CPEs

- Susan Miller, Adams County
- Michelle Jackson, Cambria County
- Lewis Gullone Carbon County
- Emily Huebert, Clarion County
- Lesley Lander, Clarion County
- Sara Dutrey, Cumberland County
- Chris Garcia, Cumberland County
- Doris Goodhart, Cumberland County
- Christopher Plitt, Cumberland County
- Laura Resch, Elk County
- Megan Park, Elk County
- Tyler Daniels, Elk County
- Robert Coon, Jefferson County
- Charles Masters, Lawrence County
- Joseph Greenleaf, Northampton County
- Jacob Ostrom, Potter County
- Casey Shoup, Westmoreland County

Congratulations to all of our award winners and new CPEs!



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To find out more, visit tylertech.com or email us at info@tylertech.com.

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