

Tax Assessment – Did the Supreme Court Just Gut the Uniformity Clause?

On September 23, 2019, the Georgia Supreme Court issued its decision in Heron Lake II Apartments, LP v. Lowndes County Board of Tax Assessors (S19A0975) (“Heron Lake II”), upholding the constitutionality of 2017 statutory changes regarding the methodology for assessing the fair market value of multi-family properties financed, in part, by taking advantage of federal Low-Income Housing Tax Credits (“LIHTCs”). In reversing the trial court, the Supreme Court held that the statutory methodologies for assessing the fair market value of LIHTC properties were “neither arbitrary nor unreasonable,” and therefore within the General Assembly’s authority. By glossing over what the Georgia Constitution’s uniformity clause actually requires, the Court may have provided a road map for future statutory changes providing for different (i.e., non-uniform) methods of assessing different types of property for taxation purposes.

In 2016, the Supreme Court had struck down an earlier version of the relevant statutes, which had prohibited consideration of LIHTCs in assessing such properties. Heron Lake II Apartments, LP v. Lowndes County Board of Tax Assessors, 299 Ga. 598 (2016) (“Heron Lake I”). Because that statutory scheme “grante[d] preferential treatment for ad valorem taxation purposes and create[d] a subclass of tangible property other than as permitted by the State Constitution,” it ran “afoul of the taxation uniformity provision.” Heron Lake I, 299 Ga. at 610. In response, the General Assembly amended OCGA § 48-5-2(3) to set out new, specific rules regarding how LIHTCs were to be considered under both the sales comparison approach and income approach to valuation of property. Specifically, these changes provided that assessors 1) may only use the sales comparison approach of valuation if the comparable sale properties are also LIHTC properties, and, 2) if using the income approach, can only consider the tax credits if those credits generate “actual income” to the property title holder -- in other words, a set of rules for how these valuation methods apply to LIHTC properties that are different than the rules for non-LIHTC properties.

The Heron Lake II Court found that the statutory change – from a *prohibition* of consideration of LIHTCs to a *special set of rules* for consideration of LIHTCs – was a distinction with a difference. While the Court acknowledged that the Constitution’s Uniformity Clause (Art. VII, Sec. I, Par. III(a)) “mandates that all property of the same class be assessed and taxed uniformly”, the Court stated that “the provisions at issue here do not directly implicate our Constitution’s taxation uniformity provision.... So, this case is less about taxation uniformity and more about the propriety of the two methods of determining fair market value” of LIHTC properties (slip op. at 18, 20). Having dispensed with the constitutional issue, the Court went on to uphold the special sales-comparison and income approach assessment rules for LIHTC properties as “neither arbitrary nor unreasonable.”

At least two problems exist with the Court’s opinion. First, it skips over the fact that, for uniformity purposes, *all tangible property* constitutes a single “class” of property, unless carved out for special treatment in the Constitution itself (which LIHTC property admittedly is not). In other words, properties that include LIHTC financing are in the same “class” as any other real property, and thus the constitutional requirement that “all taxation shall be uniform upon the same class of subjects” means that the rules for assessing LIHTC properties must be “uniform” with the rules for assessing non-LIHTC properties. As noted above, however, OCGA § 48-5-2(3) sets up different (non-uniform) rules for how fair market value is to be assessed for LIHTC properties.

Second, the “arbitrary or unreasonable” standard was engrafted by the Heron Lake II Court from an inapplicable context. In the cases from which that standard was lifted, the question was whether the valuation methods used in specific cases by a local board of assessors *from among the uniform rules on valuation set out by state law and state regulations* were arbitrary or unreasonable. Here, of course, the General Assembly has directly created a non-uniform approach to valuation of a subset of real property (in contravention of the Uniformity Clause), and thus whether a given board of assessors arbitrarily or unreasonably applied state standards is not implicated.

In Heron Lake II, the Supreme Court has arguably created an exception that swallows the uniformity rule: so long as the General Assembly has some reasonable, non-arbitrary basis (in effect, a due process test that is easily met) for concluding that particular types of property should have special rules for valuation, the Constitution’s requirement that all tangible property constitutes one “class” and must be taxed uniformly is not violated. It remains to be seen how quickly other types of property owners seek their own special assessment rules from the General Assembly in the wake of Heron Lake II.