

## Pennsylvania: Court allows untimely tax appeal



David M. Kall | Monday, March 28, 2016

In the case ***Croft v. Board of Property Assessment***, the Commonwealth Court of Pennsylvania, an appellate court that primarily handles cases involving state and local governments and regulatory agencies, overturned a 2014 decision of the Board of Property Assessment, Appeals and Review. The board, and the trial court to which the taxpayer appealed, both concluded that a taxpayer was not entitled to his appeal of tax assessments made by several taxing authorities. What is interesting about this case is not so much that the Commonwealth Court reversed the decisions below, but that it did so due to circumstances that it characterized as “extraordinary,” which, by definition, are “unique and compelling factual circumstances.”

### **Background**

The taxpayer received a deed that designated two parcels, nos. 88 and 89, located in Pittsburgh. When the deed was processed, only one parcel, no. 89, was transferred. Pursuant to that transfer, the taxpayer paid his taxes for that parcel, but not for no. 88. Nor did he or his bank receive notices of taxes or assessments for no. 88 for the period 1999-2013.

During that time, parcel no. 88 remained in the name of the previous owners. In 2003, the previous owners received a partial exoneration of the tax lien against no. 88, but thereafter, the school district levied a judgment against them for unpaid taxes, which they never received.

In 2005, the taxpayer applied for and received a building permit to expand the utility shed on the property.

## Pennsylvania Court allows untimely tax appeal

---

Although the zoning process included a survey showing two separate parcels, neither the Zoning Board of Adjustment nor the taxpayer became aware that the shed was constructed on the two lots. Likewise, no one noticed that parcel no. 88 had multiple liens filed against it. Even so, in 2012, the taxpayer received an assessment changing the value of parcel no. 89, from \$360,000 to \$450,900. Through counsel, in 2013, he stipulated to a value of \$395,000, assuming that it applied to the whole property, but everyone remained unaware of the fact that there were actually two parcels.

In June 2013, the taxpayer received a letter from the county alerting him to the fact that his lot consisted of two parcels, that he owed taxes on both of them, and that he could not combine the two until he paid those delinquent assessments. The taxpayer appealed, and informed the court of the administrative breakdown, and at some point thereafter, the records were corrected. But at that time, there was no indication that the taxpayer owed the taxing authorities any tax balance.

The board denied the appeal on the grounds that it was too late and, therefore, untimely, even though numerous witnesses testified to the occurrence of an administrative breakdown. In addition, the board stated the following:

“If a party who can read...will not read a deed put before him for execution; or if, being unable to read, will not demand to have it read or explained to him, he is guilty of supine negligence, which...is not the subject of protection, either in equity or at law.

”

### **The appellate court disagreed**

Ultimately, the Commonwealth Court concluded that the taxpayer was denied his right to appeal the tax assessments in a timely fashion due to repeated administrative breakdowns.

To allow an appeal that is technically untimely is an extraordinary remedy, but the court took note of several key facts. First, the taxpayer exercised reasonable diligence to discover basic facts and the legal consequences of those facts, and moreover, “did not dawdle” in so doing. Also, the Commonwealth Court pointed to the taxing authorities’ own “failure[s] to untangle this situation for more than thirteen years, despite possessing superior knowledge.”

Thus, the court concluded, the taxpayer’s due diligence, combined with the fact that “the record demonstrate[d] repeated administrative breakdowns that constitute the extraordinary circumstances,” called for the allowance of a *technically* untimely appeal.



**David M. Kall**

Team member bio