

A U.S. 1 ADVERTISING FEATURE

Commercial Property Taxes: Is Your Business Paying More Than Its Fair Share?

New Jersey is known for having some of the highest property taxes in the nation. While there is nothing that a tax payer can do about the local tax rate, a tax payer can seek relief by filing a tax appeal to challenge the assessed value of the property. Now is the time to investigate whether your business is paying more than it should. The real estate market has been depressed for several years, and many municipalities have not responded to the market by reassessing or revaluing property tax assessments to align assessments with the market. As a result, your business may be paying more than its fair share.

1. Investigating the Assessment

Reviewing your property tax notice, calculating the true market value of the property, and comparing the market value with recent appraisal reports may help the tax payer determine the merits of filing an appeal.

a. Reviewing the Assessment

The yearly property tax notice of assessment is sent to the property owner in February of each year. The assessment provides a value for both the land and improvements, i.e., building and structures, of the property. The important figure to pay attention to is the total assessment. The figure set forth in the assessment is based on the valuation of the property as of October 1 of the preceding year, which is referred to as the date of valuation.

b. Calculating True Market Value of Property

The figure provided in the assessment is not always a reflection of what the property tax assessor believes to be the true market value of the property. Following a revaluation or reassessment, the property tax assessment will be considered 100 percent of the true market value of the property. Under those circumstances, the tax assessment is aligned to the true market value of the property.

Otherwise, a formula called the common level of assessment must be considered in calculating true market value. The common level of assessment is the average ratio of the district in which your property is situated and is used to determine the fairness of your assessment. The common level ranges for every taxing district in the state are posted on the State of New Jersey website: <http://www.state.nj.us/treasury/taxation/lpt/chapter123.shtml>. To calculate the true market value of the property, divide the tax assessment by the average ratio. For example, the ratio in Lawrence Township for 2013 is 50.96 percent. This means that if Lawrence Township's assessed value for a property is \$1,000,000, the true market value can be calculated by dividing \$1,000,000 by 0.5096, which equals \$1,962,323.39. Accordingly, under this example, the municipality is taking the position that a property assessed at \$1,000,000 has a true market value that is nearly twice as high on the date of valuation.

An attorney specializing in tax

by Marshall T. Kizner, Esq.

appeals can assist you in calculating the true market value of the property.

c. Assessing the Merits of an Appeal

Once you have calculated the true market value of the property, it may be helpful to review any recent bank appraisals issued in connection with the sale or refinancing of the property to try to determine if the property is properly assessed. While a bank appraisal may be useful for assessing the merits of an appeal, there are many important distinctions between a bank appraisal and a tax appeal appraisal. For example, the date of valuation for tax appeal purposes is October 1 of the preceding tax year. The date of valuation for a bank appraisal is unlikely to use the requisite October 1 date. Additionally, a property tax appraisal should estimate fair market value of the property based on the value of the fee simple interest of the property being appraised. This means that the assessor will value the property as if it is unencumbered by any leases or other interests in the property. Bank appraisers often estimate fair market value using a leased fee estate, which takes into account current leases and other interests encumbering the property. It is highly unlikely that the leased fee interest equates to the fee simple interest of the appraised property. In short, a bank appraisal may provide guidance to a property owner, but due to the differences in appraisal methodologies, a tax appeal appraisal will most likely need to be acquired during the pendency of an appeal.

2. Filing and Litigating the Appeal

An attorney specializing in tax appeals can provide invaluable guidance in filing and preserving your rights during an appeal. The tax appeal process has many potential landmines that an attorney can help a tax payer avoid.

a. Appeal Deadline

A tax appeal for the current year must be filed on or before April 1, or 45 days from the date the bulk mailing of the notice of assessments is completed by the taxing district, whichever is later. The only exception is where a revaluation or reassessment has been implemented. In those instances, the appeal deadline is May 1. The courts strictly enforce the deadlines for filing an appeal.

b. Venue for Filing Appeal

Tax appeals can be filed either before the local county board of taxation or in the New Jersey Tax Court. If the assessed value of the property is less than \$1,000,000 the appeal must be filed before the county board of taxation. For most commercial properties, the assessment is \$1,000,000 or more, which enables the tax payer to file the appeal in either venue. In this scenario, an attorney can advise where the appeal should be filed. Often times the appeal is filed in the Tax Court, however, there may be strategic reasons to file before the local



board of taxation. Additionally, any decision rendered by the tax board can be appealed to the Tax Court.

c. Obtaining An Appraisal

Regardless of where the appeal is filed a tax appeal appraisal report will most likely need to be acquired to effectively appeal a commercial property. Your attorney will let you know if and when you need to obtain the appraisal. Your attorney can also assist in selecting an appraiser.

d. Tax Board Hearing or Trial

Generally, the tax payer need not be present for a tax board hearing or trial before the Tax Court. The case amounts to a "battle of the experts." Your attorney will present the case through the appraiser and the municipality will present its case through its expert.

3. Other Considerations

a. Tax Payer Must Be Current With Property Taxes to File an Appeal

A property owner cannot owe outstanding property taxes if it seeks to file an appeal. If the property owner is not current with its taxes, the municipality can move to dismiss the complaint. There are very few defenses for the tax payer in this situation, other than immediately paying the outstanding taxes owed.

b. Tax Payer Must Complete and Timely Return Income and Expense Request

Municipalities often send a request for income and expense information, which is called a Chapter 91 request, to commercial property owners during the summer. If the Chapter 91 request is not completed and returned to the municipality in a timely manner, the tax payer may be barred from appealing its taxes for the following year. It is important that a property owner be aware of the Chapter 91 request to avoid dismissal of its tax appeal on technical grounds.

In sum, there are many factors and considerations that go into investigating and filing a tax appeal for commercial property. As a result, a property owner should consult with an attorney for guidance.

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