December 31, 2009, is Due Date for Filing Property Tax Appeals in Oregon

Legal Alert
November 20, 2009

Related Services

Property Tax

Garvey Schubert Barer Legal Update, November 20, 2009.

Oregon property tax payers recently received their 2009 property tax assessments from one or more of Oregon's 36 counties. Understandably, you are upset with the fact that in the current economic climate your taxes are going up while your property value is going down. You have a right to appeal your property tax assessment to either the local county Board of Property Tax Appeals (BOPTA) or, if you are an industrial taxpayer, directly to the Magistrate Division of the Oregon Tax Court. However, *your appeal must be filed by December 31, 2009* to be considered by BOPTA or the Tax Court.

Appealing the Assessed Value of Your Property

What you are appealing is the property's assessed value, not the *amount* of property taxes. Property taxes are the product of multiplying two numbers: the tax rate and the assessed value of the property. The tax rate is limited to 1.5 percent of real market value by Ballot Measure 5, plus any local option property tax approved by voters in your district. Only in very limited circumstances may property owners challenge the tax rate.

The assessed value is the lower of the Maximum Assessed Value (MAV) or the real market value (RMV) of the property. Under Ballot Measure 50, except for six exceptions, assessed value may not be increased by more than three percent per year — which becomes the property's MAV.

RMV, on the other hand, is the amount the property would sell for between a willing buyer and a willing seller in the open market in an arm's length transaction.

Both the RMV and the assessed value appear on the property tax bill. Typically, the assessed value will be a lower value than RMV, in which case you are being assessed on the property's MAV.

To be successful in a property tax appeal, you must prove that the actual price for which you could sell your property as of January 1, 2009, its *actual* RMV (as opposed to the RMV appearing on the tax bill), is below the assessed value.

How Do You Know What is the Actual RMV of Your Property?

First, if you recently purchased the property for less than the assessed value, the sale price is a very good indication of the property's RMV. However, do *not* base your appeal upon the *assessed* value of other properties. The Tax Court has ruled that the assessed value of other properties is not a sufficient legal basis for seeking a property tax reduction.

An examination of the income generated by your income-producing property may give you an indication if the assessed value is too high.

Income may be generated by lease or rental rates of commercial real estate that have been suffering from high vacancy rates.

In the case of owner-occupied industrial property, RMV may be measured by the cash flow generated by the operating facility. If the income generated from the property is far below the expected rate of return of the debt and equity capital invested in the property, this may indicate that the property is over-assessed because it suffers from functional or economic obsolescence.

Aside from the sale of your property at or near the assessment date, the best evidence of the property's actual RMV is an appraisal of the property by a qualified expert for property tax purposes. It may be that your property has been appraised already for other purposes — insurance, partnership buyout, or estate planning purposes. These appraisals may give you an indication whether or not the assessment of your property is inappropriately high.

However, appraisals for property tax purposes require that the appraiser render an opinion of the real market value of the fee simple interest of the property as of January 1 of the tax year. An insurance appraisal that estimates insurable or replacement value is not sufficient. Likewise, an appraisal for estate planning or investment purposes may not fit the requirements necessary for a property tax appeal.

A competent appraiser will determine the RMV of the property by use of one or more of the three approaches to value: the cost approach; the sales comparison approach; and the income approach.

The cost approach adds the land value to the depreciated cost of the property's improvements.

The sales comparison approach compares the *sale price* (not assessed value) of comparable properties with the property being appraised and makes adjustments for any differences between the two.

The income approach capitalizes either the market rental rate or the cash flow of the property by an appropriate rate of return that reflects the return on, and return of, the investment.

Not all of these approaches may be applicable to the specific property being appraised, but all three will be considered by a competent expert.

Taxpayers who own residential or commercial properties must first appeal their assessments to the BOPTA of the county in which the property is located. Taxpayers who own industrial property may elect to appeal to BOPTA, or skip BOPTA and appeal directly to the Magistrate Division of the Oregon Tax Court.

It is highly recommended that taxpayers who desire to appeal the assessment of commercial or industrial property consult with a professional familiar with property taxation and the appeal process. However you chose to proceed, please remember that *your appeal must be filed no later than December 31, 2009*.