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The Value of Real Estate Tax Appeals in 2010

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As the state and national economies have faltered and the value of real property has declined, the assessed value of a property may be highly overstated compared to its current market value. As a result, unless a property owner challenges the property tax assessment, the owner will be squeezed by the decline in property values and increasing tax burdens.

Is a Tax Appeal an Opportunity?

Before the current recession, many property owners overlooked a fruitful area for reducing costs by failing to challenge the basis on which real estate taxes are assessed. Although today every cost item will be scrutinized, a real estate tax reduction is not automatic. The burden of proof rests with the party challenging the assessment. Furthermore, the fact that a widespread decline in value is "general knowledge" is not sufficient to convince a court that a reduction in assessment should be granted.

A tax appeal is generally warranted where (1) the assessment is in excess of the fair market value of the property, or (2) the assessment is discriminatory as compared to the average level of assessment for all other property in the same municipality. For example, even if property is assessed at its fair market value, an appeal may be appropriate because the general level of assessments for a particular town may be less than 100% of fair market value. The reliance on comparable sales and/or comparable rents in this process may be difficult because recent transactions may be scarce or non-existent.

In the current environment, owners of industrial, commercial and multi-occupancy properties may find a tax appeal appropriate.

The Appeals Process and Examples

Most tax appeals settle. In fact, the Tax Court rules now mandate that the parties participate in a settlement conference. Recent settlements in which the firm represented the property owner have involved various types of properties:

- 160-unit apartment complex - assessment reduced by 13% from $4,672,600 to $4,050,000.
- Beachfront home - assessment reduced by 14% from $3,604,300 to $3,100,000.
- Assessment of 117 room hotel reduced by 34% from $4,319,400 to $2,844,200.
- 80,000 square foot multi-tenanted office building – assessment reduced by 46% from $8,000,000 to $4,250,000.
- Exemption granted for nonprofit company.
- Shopping center assessment reduced by 30% from $2,275,000 to $1,587,800.
- Shopping center assessment reduced by 20% from $759,000 to $600,000.

When the Parties Cannot Settle

On occasion, the difference between the owner's and the town's estimates of market value cannot be reconciled. In those cases, formal appraisals are exchanged and the parties prepare for trial. Recent tax court trials in which the firm represented the property owner have resulted in substantial assessment reductions and tax refunds:

- A 200,000 square foot multi-tenanted office building was revalued for $30 million. The Tax Court reduced the assessment to $19 million. The property was 80% vacant and required substantial repairs to attract tenants. The City's appeal from the Tax Court judgment was denied, but the firm's cross-appeal seeking a further reduction was granted. Settlement discussions after the appellate ruling resulted in an assessment of $16 million in the fourth year after the initial revaluation.
- Rollback taxes were imposed on 100 acres of vacant land previously assessed as farmland, which were sold to a residential builder. The tax bill was in excess of $500,000. The owner argued, and the Tax Court agreed, that the status of governmental approvals was critical to the value determination. The comparable sales used by the appraisers had closed with all governmental approvals having been obtained. The subject property did not have all approvals on the relevant assessing dates. In fact, only general development approval was granted as of the assessing dates for the first two of the three rollback years. The Tax Court sanctioned a substantial adjustment in the sale prices of the comparable sales made by the owner's appraiser and reduced the taxes by $150,000.
- A tax appeal on behalf of a bank regarding a failed residential development resulted, after a hearing, in a 50% reduction in the assessment of each individual unit.

Contact Information and Deadlines

Our partner, Thomas J. Denitzio, Jr., in addition to prosecuting tax appeals, spends a considerable amount of his time evaluating whether or not a tax appeal is warranted.

The filing deadline is April 1 for tax year 2010, unless the town completed a reassessment or revaluation, in either of which events the filing deadline is May 1. Please call Tom well in advance of the deadline if you would like to consult on the merits of an assessment appeal for your property.

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