

New Law Raises the Bar for Property Owners Challenging Their Property Tax Assessments

In this age when businesses retain accountants, lawyers and consultants to assist in so many aspects of their operations, some businesses have not sought the assistance of experts when it comes to challenging property tax assessments before the local board of review. Up until recently, the Wisconsin property tax assessment system largely accommodated this approach.

It is not uncommon for a business to send its tax manager, accountant or even a tax consultant to do battle with the assessor at the local board of review. Sometimes this approach generates an acceptable assessment. If not, and if the stakes are high enough, the business could always commence an excessive assessment lawsuit so that a judge will take a fresh look at the assessment. In such a suit, the business' attorney could offer appraisals, call witnesses and present other evidence that was not offered to the board of review. For many property owners, these days are long gone.

New Law Affects 2008 Assessments

Under a new law that takes effect with 2008 assessments—Act 86—a local government can force property owners to make their entire case before the local board of review. While property owners can still appeal to the circuit court, in most circumstances, the judge will only be able to consider the evidence that was presented to the board of review.

Under Act 86, a business may no longer get a "do over" in front of a circuit court judge. More importantly, when negotiating with an assessor, many businesses will be in a weaker position because they will lack a credible threat of filing an appeal with the circuit court for this de novo review.

Getting It Right the First Time

Under Act 86, the board of review hearing will be much more like a proceeding in circuit court:

- The property owner can subpoena documents from the assessor and must respond to subpoenas from the assessor;

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- Both parties must create an evidentiary record that may be reviewed by the courts on appeal; and
- Both parties should make all of their legal arguments before the board of review or risk having them waived on appeal.

In short, Act 86 will force property owners to concentrate their efforts at the board of review. For example, appraisals will have to be presented to the board of review, rather than to the circuit court.

Forcing property owners to make their entire case before the board of review can also present timing challenges. Normally, a board of review hearing can occur in as little as 15 days following the notice of assessment. Local governments that adopt the Act 86 provisions must grant a property owner a 60-day postponement of the board of review hearing if requested and if a \$100 fee is paid. But 60 days is rarely a sufficient amount of time to put together a case that will successfully challenge an assessment of business property. Anyone who has procured an appraisal report of a commercial property knows that 60 days is often an inadequate amount of lead time for many appraisers.

Act 86 also presents other traps for the unwary that, if not avoided, can make it difficult or impossible for a property owner to successfully challenge a property tax assessment. The good news is that Act 86 is optional. The bad news is that Act 86 has been a key legislative goal of the Wisconsin assessor's organization and was supported by many local governmental organizations. Given this support, one would expect that many local governments would adopt the Act 86 provisions.

Challenging Property Tax Assessments Under Act 86

Despite these changes, there are steps that a property owner can take to keep its property tax assessment in line, even if its local government adopts Act 86. If a property owner feels that a prior year's assessment was excessive, the owner need not wait until a new assessment notice is issued. Rather, the property owner or its representative can take steps to advocate for a lower valuation before the assessment is set.

Similarly, the property owner who feels the prior year's assessment was excessive, may want to begin preparing its case before assessment notices are issued. Assessments do not typically go down without intervention by the owner



or its representative.

If an assessor has not embraced a property owner's rationale for reducing an already excessive assessment, the owner may want to consider beginning the preparation for a board of review hearing.

Finally, a property owner should consider retaining an attorney who is experienced in prosecuting property tax appeals. An experienced attorney will be in a better position to assemble a successful challenge within 60 days. Retaining an experienced attorney will also let the assessor know that the property owner is capable of complying with the requirements of Act 86, which may increase the chances for a favorable settlement.

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