

Take Steps Now to Challenge Your 2009 Property Tax Assessment

For many property owners, the property tax bills issued in December were a wake-up call, leading them to conclude that perhaps they are paying more than their fair share of property taxes. The situation that many businesses and property owners are experiencing right now is the combination of at least three factors:

- A reduction in the growth of residential assessments has shifted some of the local property tax burden from residential properties to commercial and business properties. Moreover, in some communities, this effect has been exacerbated by the conscious efforts of assessors to shift more of the property tax burden from residential property to commercial and business property.
- An increase in the tax rates in some communities—reversing a general trend of annual reductions—due in part to the decline in residential values.
- The failure of many assessors to account for reductions in the value of commercial and business properties due to the current economic slowdown and other factors.

Unfortunately, there is every reason to believe that these trends will continue for the foreseeable future.

Barriers to Reducing Assessments

The sad fact is that the vast majority of property owners have no recourse for their tax bills that were received in 2008 and payable in 2009. With very few exceptions, unless a property owner filed a timely objection with its municipality and made the necessary presentation before the local board of review, the property owner has no recourse to obtain a lower assessment or obtain a refund of the taxes that have been paid.

This situation is getting worse for many business because these procedural hurdles for property owners are becoming even greater. A new law gives local government the ability to change its board of review procedures, actually raising the bar on property owners appealing their property tax assessments. Prior to

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this new law, most property owners could easily make their case before the local board of review and still preserve their opportunity for a full appeal of their assessment in circuit court. Under the old law, once in front of the judge, the property owner could offer a full range of evidence to support a lower assessment—including an appraisal—and the property owner was not limited to the evidence offered at the board of review. This opportunity for a new hearing—also known as *de novo* review—is important because board of review hearings are often scheduled a mere 15 days after notices of assessment are mailed. It is almost impossible to secure an appraisal on 15 days notice. The ability to have a *de novo* hearing is a potent remedy that strengthens the property owner's hand in negotiating a settlement. This is important because the vast majority of these lawsuits are settled.

However, under the new law, a local government can require property owners to make their entire case before the local board of review. While there is still an appeal to circuit court, property owners generally cannot offer new evidence to the judge; rather, they must rely on the evidence offered to the board of review. This means that the board of review becomes the crucial step to obtaining a reduction in a property tax assessment. Not only is it important to present all of the evidence necessary, property owners must also adhere to the rules of evidence and other procedures that apply to board of review hearings.

In a turn of events that may backfire on taxpayers, a Milwaukee County Circuit Court judge recently struck down as unconstitutional the new law mentioned above. The judge held that the new law did not treat all property owners the same. While an appeal is likely, there will almost certainly be an attempt to amend the law to limit the appeal rights for **all** property owners. Right now the new law is a local option. Regardless of how this issue plays out, one thing is certain: property owners will continue to face obstacles in their attempt to obtain fair property tax assessments of their properties.

Proactive Steps

Despite these procedural hurdles, there are steps that property owners can take to reduce their property tax liability in 2009 and years thereafter:

- Make early contact with the local assessor—even before assessment notices are issued—to find out the basis for the previous assessment and whether the municipality has adopted the new law.

- If unsatisfied with the assessor's rationale, the property owner can present a cogent argument to the assessor that justifies the property owner's opinion of value, including requisite documentation (e.g., comparable sales, construction costs, rental income and expenses). However, in making this presentation, the property owner must use caution; anything said can and will be used against the property owner in proceedings.

If the property owner cannot sway the assessor, the next major step is to navigate the board of review process. It is the rare property owner who has the experience and resources necessary to obtain a significant reduction in the assessment of a commercial or business property before the board of review. At every step there are traps for the unwary. For example, in a recent case, a municipality gave the wrong form to a business taxpayer, resulting in an overpayment of about \$200,000 in property taxes. The court rebuffed the taxpayer saying it was the taxpayer's responsibility to make sure it used the proper form. Examples like this lead many property owners to consult an expert who can not only assemble and present a board of review case, but also take the challenge to circuit court if necessary. It is also important to have a representative who knows the assessors and can work with them to settle assessment disputes in a timely and efficient manner.

For more information about the taxability of leased property—as well as other property tax exemption issues—contact your Reinhart attorney or the author:

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