Focus On: Tax Protests

Protesting Your Tax Assessment Before The NYC Tax Commission

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Property owners' annual chance to fight City Hall is coming around again. On January 18, 1994, the new 1994/95 assessment roll will be made public and real estate taxes for the year commencing July 1, 1994 will be based upon the values filed on that roll.

Filing Deadlines

Owners of real property have the right to object to their tax assessments if they file an application for correction with the Tax Commission of the City of New York between January 15, 1994 and March 1, 1994. This year, January 15 falls on a Saturday, and since Monday, January 17, 1994 is Dr. Martin Luther King Day, Tuesday January 18, 1994 will be the day the taxable assessment roll is published. Most property owners who object to their assessment utilize the services of an attorney. However, attorneys are only as good as the information that they receive from their clients. This article will review some of the basic procedures when appearing before the Tax Commission.

Which Forms To File

Owners of income producing properties which have an actual assessed value less than $750,000 will file an objection to their assessed value on the TC102 green application. If the property is assessed at $750,000 or greater, the owner utilizes a TC101 blue application. The Tax Commission last year prepared new application forms and modified versions of these forms are now being used. The owner must be certain that all questions on the reverse side of the form dealing with the physical and fiscal status of the property are fully and accurately completed by the owner and his or her attorney. The Tax Commission will not grant a hearing if the answers to the questions are not completed. Special attention is drawn to question number five dealing with vacancies in the property. Owners must indicate the number of vacancies that occurred on January 5, 1994. The purpose of this question is often misunderstood by applicants and the role of this question in the hearing process has changed over the years. The question was originally used to ascertain if owners were deliberately leaving apartments vacant, resulting in a decline in the rent roll. Today, an excessive number of vacancies often means that the owner is unable to rent the apartments at the same rent as the previous occupant and is often unable to find qualified tenants at any reasonable economic rental.

Unless the property has been purchased during the past year or there is some other extenuating circumstance, an owner will not receive a hearing unless a detailed statement of income and expenses for the property is completed on the appropriate form and attached to the application. If the property has recently been purchased, the owner must supply a closing statement and a detailed affidavit concerning the purchase price.

For properties assessed at under $750,000, the income and expense statement may be for either 1993 or 1992. Experience has shown that the Tax Commission prefers the most recent financial statement since it is the most accurate reflection of the operation of the property and thus an owner with an earlier year's income and expense statement may be subject to greater scrutiny and adjustments in its submitted statement. In practice, the Tax Commission may grant a hearing, but will require an owner to submit a 1993 statement prior to any offer being made. For properties assessed at $750,000 or greater, the Tax Commission will only accept the most recent year's income and expense statement. Furthermore, if the property is assessed at $1,000,000 or more, the income and expense statement must be accompanied by a certification from a certified public accountant filed on form TC209BB which attests to the accuracy of the statement. Although the application for correction must be filed by March 1, 1994, the income and expense statement for income producing properties assessed at $750,000 or more (and the accountant's certification, if required) may be filed by March 24, 1994, as long as the application for correction was filed timely, and the income and expense statement is filed along with a duly executed supplemental income and expense application.

Tax Commission Hearing

After the application has been filed, it is reviewed by the Tax Commission and, if requested, a personal hearing is then scheduled and the owner or its attorney is notified of the time and date. At the hearing, the owner or its representative will have an opportunity to expand upon the written material that had previously been furnished to the Tax Commission and to present its argument. The hearing is not held before the entire Tax Commission, but rather before a single member of the Tax Commission, or a specially trained hearing officer who has been designated to review the application. The hearing officer does not necessarily accept the income and expense statement as presented, and may attempt to make adjustments in determining the estimated expenses. The Tax Commission has prepared a confidential analysis of

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various expenses for similar types of properties, and if the expense or income of a particular property does not fall within the range of similarly situated properties, the hearing officer will reduce or eliminate certain expenses. It is up to the owner or its representative to document why the expenses on any given property are not within the usual range of expenses.

The Tax Commission seeks to review an assessment based upon its perceived fair market value of the property. Value is determined based upon the capitalization of income method of appraisal. With the Department of Finance's retrenchment from the rigid 45% of sales price methodology in the determination of an assessed valuation, the income and expenses of a particular property are paramount in setting the valuation. The hearing officer will thus apply an appropriate capitalization rate to the net income before taxes to determine the assessed valuation. The hearing officer must rely upon the Tax Commission's confidential guidelines as to what is an appropriate capitalization rate for a particular property. The hearing officer has some discretion in choosing an appropriate capitalization rate, as long as the hearing officer stays within the Tax Commission guidelines. The capitalization rates used by the Tax Commission are not necessarily the same rate used by the Department of Finance in determining the assessment and may be higher or lower.

Accepting An Offer

At the conclusion of the hearing, the hearing officer will either orally advise the owner or the attorney of his or her decision, or will place the matter on reserve and send a written decision at a later date. The written notification will not state a reason for the decision. If the owner wishers to accept the offer, an acceptance form TC107 must be filed with the Tax Commission. If the owner does not receive an offer of reduction from the Tax Commission or if the owner deems the offer inadequate, the owner's only other remedy is to commence a proceeding for judicial review pursuant to Article Seven of the Real Property Tax Law by filing a petition with the New York State Supreme Court.

Helpful Hints

If you have not received a notice of your new tax assessment from the Department of Finance, check your assessment by going to the Real Property Assessment Office in the borough where your property is located. Make sure you have the block and lot for your property when you go to or call the Assessment Office.

In addition to protesting before the Tax Commission, you can also protest your taxes through a less formal procedure called a "Change by Notice", in which forms are filed with the Department of Finance stating why you think your property is over-assessed. Unfortunately, this procedure can result in an increase or decrease in assessment. If you use this procedure, you should also file a protest with the Tax Commission to protect your rights. ◆