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Tax abatements for problematic properties in the New Year

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In my experience in representing taxpayers, the valuation that Boards of Assessors place on certain categories of real estate is often too high. In this article, I will cover some of the situations I have encountered in my tax abatement practice.

Special Purpose Buildings: Assessors have trouble with special purpose buildings such as amusement centers, health clubs, nursing homes, and medical office buildings. There are often not enough sales of comparable special purpose properties. The sale of a medical office building does not occur every day in a town such as Norwell, for example. Therefore, it becomes impossible to use the sales-comparison approach. The sales that have occurred may not be truly comparable. For example, a medical office building in Norwell does not have the value of a medical office building in Wellesley.

In lieu of the sales-comparison approach, appraisers use income capitalization or cost reproduction for special purpose properties. This can lead to inaccurate appraisals. For example, an appraiser is not qualified to testify on cost reproduction. This should be done by an engineer, but often the only expert involved in the case is an appraiser. The result can be less than satisfactory.

Special purpose properties tend to be high risk properties that are affected greatly by a recession. Assessors would have difficulty with buildings used for bowling alleys, go-cart race tracks, or health clubs. If the facility is vacant or nearly vacant, it is difficult to use the income capitalization approach. Cost reproduction also does not work as it is unlikely that a buyer would pay cost reproduction for an empty building which has only one use. For example, a buyer would not pay replacement cost for a health club which includes an indoor swimming pool and other amenities, if the buyer did not want to use the building as a health club. The cost to retrofit a special purpose building clearly is a negative in putting a value on the building.

Contaminated Property: Neither capitalization of income nor sales-comparison methods lead to accurate valuation for properties contaminated by hazardous materials. The stigma of a contaminated property is difficult to quantify. It is certainly more than just the cost to remediate or the cost to monitor. The difficulty of obtaining financing, the need to indemnify purchasers, and the liability to third parties must be considered. Because it is difficult to quantify the affect of contamination on a given property, assessors often ignore the negative impact of contamination. This obviously leads to an inaccurate assessment. The affect of contamination on smaller commercial properties such as a building with four stores can be very difficult to determine. A buyer of such a property is normally not sophisticated and will be reluctant to buy a property with a history of contamination.

Affordable Housing: The case law is clear that in calculating the estimated gross annual income of a housing project financed by and operating under a governmental program to promote housing for low and moderate income people, the restrictions placed by Federal regulations on the actual

income of the project must be considered (Community Development Co. of Gardner v. Board of Assessors of Gardner, 377 Mass. 351 (1979)). Therefore, the assessors may not base their valuation on the higher "fair market" rental rates.

Auctioned Property: In a condominium development, the developer may elect to use an auction to dispose of units in a sluggish market. The sales price of the units that have been auctioned should set the value for assessment purposes. Assessors, however, often resist that the auction is an accurate determination of the value of the units. During calendar 2011, I represented a large number of unit owners in one such condominium development. We settled the cases for numbers that were closer to the auction prices than to the assessments. The assessors recognized that an auction can determine value.

Exempt Property: Property that is owned by a non-profit entity and occupied by low income tenants should be fully exempt from taxation. Even though the case in Massachusetts law now supports this conclusion, municipalities are reluctant to concede this. The Appeals Court in 2009 in Mary Ann Morse Healthcare Corp. v. Board of Assessors of Framingham should have resolved this matter. The ATB has confirmed this in a recent 2011 case involving the City of Holyoke (The Congregation of Sisters of St. Joseph v. Board of Assessors of the City of Holyoke). Other municipalities, however, have been slow to concede that a low income project that is prohibited by statute from showing a profit for many decades must be exempt from real estate taxes until the prohibition lapses.

Municipalities are having budgetary problems. The assessors and the appraisal firms hired by the assessors do not necessarily have the expertise or the will to determine the actual fair cash value of property. It is up to owners, therefore, to file for abatements in order to pay no more real estate taxes than the law requires.

We are in fiscal year 2012 which began on July 1, 2011, and ends on June 30, 2012. Now is the time to review the assessments on commercial and industrial real estate. In the event the assessment exceeds the fair cash value as of the "relevant date," which was January 1, 2011, owners should consider filing an application for abatement with the local board of assessors. We would be happy to assist owners with completing the application. We spend a significant amount of our time each January filing applications for abatement.

Most municipalities in Massachusetts send out quarterly tax bills. The first two are merely preliminary bills. The third bill, which is usually sent after the tax rate has been set, is an actual bill.

The application for abatement must be filed with the board of assessors not later than the date for paying the actual bill. Assuming that the bills were mailed by December 31, 2011, the due date both for payment of the tax and for filing the application for abatement is February 1, 2012.

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