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Assessing your property assessment: Consider seeking an abatement of the real estate tax

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The new fiscal year (FY '14) began on July 1 and by now you probably have received your initial real estate tax bill. If you are an owner of the property, a tenant who is obligated to pay more than half of the taxes, the owner's administrator or executor or even a mortgagee in some cases, you might want to consider seeking an abatement of the tax. The good news is that the Commonwealth provides an administrative procedure to reduce your taxes. The bad news is that the procedure is multi-layered and full of fatal traps for the unwary. These traps fall into two general categories. The first is a set of filing deadlines. The second concerns payment of the tax in a timely manner. If you miss a deadline or a payment by a second your rights to an abatement evaporate (with a few exceptions that almost certainly do not apply). Most cities and towns in Massachusetts are on a quarterly tax-billing system, although there are still some municipalities that cling to the old semi-annual system. Valuations for FY '14 were fixed as of January 1. That is important to keep in mind in a rapidly rising real estate market such as the one that we currently find ourselves in. Your municipality cannot reap the benefit of that 2013 "bubble" in FY '14. Overvaluation is the most common ground for an abatement. That argument is usually based on comparable sales or a capitalization of income approach. Again, though, you are dealing with the valuation on January 1, not as of the date of the bill. Other grounds for abatement include disproportionate assessment in comparison with other properties, improper classification or exemption from taxation. Your recent bill may well be an estimated or "preliminary" bill. That means that the municipality has not yet set its tax rate. You do not need to file an abatement on an estimated bill. The filing deadline runs from the time when the actual FY '14 bill is received. That could be now, or it could run into calendar 2014. Delivery of the actual tax bill triggers the first filing deadline. The abatement application must be filed on or before the date that of the first payment of the actual (i.e., not estimated) tax bill. This filing deadline is jurisdictional. If you miss it the municipality loses its statutory authority to grant an abatement. It is the taxpayer's burden to prove timely filing of the application. Care must be taken to create evidence of the filing. The initial abatement application is made to the municipality, usually to the board of assessors. It involves the completion of a simple form, which the city or town will provide. Municipalities will often require certain "information requisition" forms and evidence of authority for applications on commercial property. By statute, the failure to provide the required information can be fatal. The municipality then has three months from the filing of the abatement application to act on it. A failure to act equals rejection. You are subject to strict deadlines, not the city or town. Appeal from the decision (or indecision) of the city or town goes to the Commonwealth's Appellate Tax Board (ATB) in Boston. Again, the appeal must be filed in a timely manner. Failure to meet that deadline results in a lack of jurisdiction of the ATB to hear the case. The ATB offers a two-track appeal system. The "formal" system resembles a full-fledged

administrative hearing. Lawyers and expert witnesses are often involved. The "informal" system is a bit more relaxed and designed for quicker adjudication. An appeal from the ATB goes to court. Unless a major legal issue is involved, most taxpayers do not utilize this level of appeal. In addition to these filing deadlines, there are payment requirements also. Filing of an abatement application does not stay in the collection of your taxes. In most cases, the taxes must be paid in a timely manner in order to pursue the appeal. Again, this payment requirement is jurisdictional. If you do not pay the proper amount on time you lose your rights. Care should be taken to create a record of timely payment. Taxpayers with questions about valuations or appeals should contact counsel to discuss their specific concerns. Clients and others seeking assistance may contact Neal Glick (nglick@darroneverett.com) or Zachary Darrow (zdarrow@darroneverett.com) at DarrowEverett LLP. Neal Glick is a partner with DarrowEverett LLP, Boston, Mass.

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