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New construction may be subject to pro rata taxation - by Richard Conti

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One day a local contractor walked into the Taunton, Mass. assessor's office, pointed his finger at me and said, "You are trying to put me out of business!" He had just received a July 1st real estate tax bill for a new single family home he was building and had not yet sold. The single family home was complete with just a few touch-ups remaining and had an occupancy permit issued after January 1st and before June 30th. He was thinking (correctly) that all property in Massachusetts are assessed as of January 1st and was surprised when he received his mid-year tax bill.

The occupancy permit triggered a pro rata amount to tax under M.G.L. Ch. 59 sec. 2D. It is triggered whether the permit is temporary or permanent providing the improvements are over 50% complete. Building inspectors I have known discourage temporary permits and typically the fee is three times higher while most of the conditions to grant the permit remain the same. Temporary permits are granted with commercial real estate more frequently than residential properties. Occupancy permits are granted when a building is 100% done and all safety systems are in place. Temporary permits are granted when the safety systems are in place but conditions to the occupancy such as landscaping or site plan issues are delayed due to weather or other qualified reasons.

Any new construction occupancy permit granted between January 1st and June 30th in Massachusetts results in a pro rata tax bill based on the assessed value of the improvements (excluding the value of the land) to the days remaining on the fiscal year from the date of the issuance of the occupancy permit. Additionally, the law applies to the succeeding fiscal year as well. Since new subdivisions could easily have several properties affected, the tax bill could be sizable.

The tax bill issued is due in 30 days and comes with the right to file for an abatement and appeal of taxes. Details are printed on the tax bill.

The calendar year and fiscal year can be confusing. All property in Massachusetts are assessed on January 1st based on the sales of similar properties two years prior. Thus the January 1st, 2020 assessment is based on sales which occurred in 2018. The figure used for the January 1st assessment is calculated long before the effective date so the tax bills can be mailed on time. In fact, the tax rate is set by the community in the quarter leading up to January, typically November. The cost basis and the comparable sales for new construction occupied after January 1st and before June 30th are based on costs and sales in 2018.

Fortunately for some, the reverse applies to properties decreased in value (not including the land) more than 50% as a result of fire or natural disaster. The city or town will abate or refund taxes received calculated in the same manner as above, based on the assessed value. Victims of such diminution have an entire year from the date of disaster to apply to the assessors for the abatement if it is not processed automatically. This too could have major consequences in the event of a micro burst, flood or tornado.

There is a local option on all of the above for a community to reject the tax law with written

notification to the department of revenue. This would be as a result of a majority vote by the Board of Selectmen or Municipal Council. However, I am unaware of any community which has opted out of the pro rata tax.

This article is appearing mid-calendar year just before tax bills will be mailed for the new fiscal year. If you are about to sell a new building, call the assessor. Or better, have your accountant call the assessor. Sure beats finger pointing.

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