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Real estate tax reduction: Taxes and a new assessment system grow together in Nassau County

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After a much-publicized lawsuit contending that its residential assessments were discriminatory, Nassau County embarked on an historic and partially court-ordered reassessment in 2001. Although the lawsuit focused on residential property, Nassau County decided to reassess all residential and commercial property, starting with the January 2003 assessment roll. After three years of implementing the reassessment, the dust has begun to clear enough that we are starting to see the effects of the reassessment on commercial property. At the same time as commercial property owners were reeling from the effects of the reassessment, they were also faced with the creation of an "Assessment Review Commission" (ARC) and an entirely new assessment review calendar.

The reassessment revisited

To carry out the reassessment of over 440,000 parcels (approximately 80,000 of which are commercial), Nassau County hired an out-of-state mass appraisal firm to take on the huge undertaking. In addition, two local appraisal firms were hired to provide a local flavor, and, in theory, checks and balances on the final valuations. Given the rapid appreciation in real estate market values, one might think tax certiorari (assessment challenges) would vanish as properties were reassessed at market value. However, they increased. This increase was mainly attributable to the significant market value increases on the new assessment roll and from the uncertainty of the tax burden created by the reassessment.

We have observed that, while some commercial properties did see their taxes decline, many others saw them rise dramatically. Even for those that initially declined, over the two succeeding tax years, most tax bills rose as commercial rates continued to escalate. Nassau County tried to reassess properties at 1% of market value. Prior to this, commercial properties were assessed at roughly 6% of market value. Thus, if a market value (in Nassau County's eyes) stayed the same, pre-reassessment to post-reassessment, the assessment attributed to a property would drop roughly sixfold. Conversely, to make up for the lowering of the assessment percentage, commercial tax rates rose roughly sixfold. This initial change in tax rate made it difficult for anyone to know if the rate had risen as a result of increased government spending, the change in the assessment percentage or the increase in the assessed market value from the reassessment. For most properties, it was a combination of all three.

The drop from 6% to 1% circumvented the transitional assessment provisions of the real property tax law. Those familiar with property assessments in NYC will remember that transitional assessments allow the city to phase in "equalization" increases (those attributed to rising market values) over a five-year period. Increases for physical changes and alterations to properties are not phased in. Rather than using transitionals, Nassau County lowered the assessment percentage and avoided the five-year phase-in period. For many commercial property owners, this resulted in severe sticker shock upon receipt of that first tax bill in October 2003. After the January 2003 initial reassessment, there were reassessment updates for January 2004 and 2005; and the transitional phase-in was implemented. Nassau property owners should carefully check their 2005/06 tax bills to see that they received the appropriate transitional phase-in. Another reassessment problem area involves properties with preexisting exemptions. Just as with the transitional phase-in, exemptions may have been unintentionally omitted or circumvented. Property owners are urged to check their tax bills carefully and to consult with their real estate tax counsel.

The rise of the assessment review commission (ARC)

The Nassau County ARC closely resembles its counterpart in NYC, known as the "tax commission." Like the tax commission, the ARC has become very active in requesting information from property owners, since it is empowered to provide tax relief without the need for judicial review. Property owners are cautioned that failure to provide requested information to the ARC can prevent relief at both the ARC level and perhaps even the judicial level. Some property owners in Nassau County have benefited from having an active assessment review process that can provide relief without having to resort to the time-consuming judicial review.

While technically separate from the ARC, the Nassau County assessor now also requests information from property owners. Like NYC's Real Property Income and Expense form (RPIE), Nassau County now has the the Annual Statement of Income and Expenses (ASIE). To date, it is not clear as to what use, if any, the assessor has made of the submitted data.

The new calendar

As if there was not enough confusion in the Nassau County assessment and review process, the introduction of new timeframes for filing protests and collecting taxes can only be called "piling on" or "unnecessary roughness." Under the new system, the tentative assessment roll is still published in January of each year, but the taxes based upon that tentative assessment roll are not levied until October of the following year, almost 22 months later. For example, January 2006 will be the publication of the tentative assessment for the 2007/08 taxes. While this change was done with the intention of providing longer periods to review assessments, it is actually a dangerous change for Nassau property owners. If a property assessment is not challenged between January 2 and March 1 of 2006, there can be no tax relief for the 2007/08 tax year when the tax bills arrive almost two years later. At this point, property owners do not know their full 2005/06 taxes, and they have absolutely no idea what their 2006/07 taxes will be. For most, the only viable alternative is to make sure that there is a grievance filed for each and every tax year.

The other danger in the new calendar is that the taxes levied two years later are based upon market values two years prior to the levy date. A property that is healthy in January of 2006 but has problems at the end of 2007 will still wind up paying taxes as if healthy.

The final analysis

Much like the N.Y. state lottery, to succeed in the assessment review process, "you have got to be in it to win it." Without starting the initial administrative review grievance this coming January, for many Nassau property owners it will be too late.

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