

REAL PROPERTY TAX APPEALS UPDATE

REAL PROPERTY TAX APPEALS MUST BE FILED BY APRIL 1, 2009

Many lenders and property owners are finding themselves in possession of unproductive and/or deflated real estate assets. One way to off-set or reduce the burden of these conditions is to annually review the real property tax assessment to determine whether the assessment should be reduced to reflect the market.

Real Property Tax Appeals are challenges to excessive real estate tax assessments and must be filed by April 1, 2009. Real Property Tax Appeals are an essential function of asset management and crucial to weathering the current real estate recession. We urge you to let us review your 2009 New Jersey property tax assessments to help you identify potential opportunities to reduce real property tax liability.

The right of a property owner to appeal the assessment of real property is established by the State Constitution and statutory law. In Village Supermarkets, Inc. v. West Orange Tp., 106 N.J. 628 (1987), the Supreme Court of New Jersey determined that a significant tenant, who pays taxes under a lease, has standing to proceed with an appeal in its own name to challenge the assessment of real property.

During the last real estate recession, John M. Pellecchia, a partner at Riker Danzig and head of its Real Property Tax Law practice group, persuaded the Tax Court of New Jersey to extend the rationale of Village Supermarkets to establish the right of a mortgagee to proceed with a tax appeal for a property in default under a mortgage in Chemical Bank of New Jersey, N.A. v. City of Absecon, 13 N.J. Tax 1 (N.J. Tax 1992).

Chemical Bank was decided in an economic environment similar to today's climate of falling property values and rising foreclosures. Chemical Bank provides mortgagees with an important tool to limit losses on distressed properties, and maintain assets during the pendency of foreclosure and/or sale proceedings.

If you have any questions about the issues discussed in this newsletter, please contact one of the partners in charge of our Real Property Tax Law Group: John M. Pellecchia or James L. Lott, Jr. We send these newsletters to our clients and friends, free of charge, to share our thoughts on new developments in the law. Nothing in this newsletter should be relied upon as legal advice in any particular matter. Copyright © 2008 Riker Danzig Scherer Hyland & Perretti LLP.

FEBRUARY 2009

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Riker Danzig has a sophisticated statewide practice in property tax law and is ready to undertake a review of the assessment of your commercial properties throughout the state to determine whether appeals are warranted. To do this, we work closely with appraisal consultants, who will analyze the assessments (at no cost to our clients) to determine if the properties are properly valued for purposes of taxation.

To undertake a preliminary review of a potential tax appeal, we will need a copy of the 2009 Notice of Assessment (the post-card mailed to the property owner in February of each year indicating the assessment for that year) as soon as possible.

A brief summary of the procedure for the assessment of real property in New Jersey and the procedure for the appeal of such assessment is set forth below.

Assessment

All real property in the State of New Jersey is valued each year as of October 1 of the pre-tax year. In practice, most assessors do not reassess each property annually. As a consequence, assessments often equal or approximate 100% of "true value" only in the years for which a reassessment or revaluation has occurred.

Each year, the Director of the Division of Taxation determines the ratio of assessed value to "true value" on an average basis for each municipality by utilizing sales data of preceding years. These ratios are known as "average ratios".

True value represents the fair market value of the property or the price for which the real property would sell in an arm's length transaction between a willing buyer and a willing seller. To determine the assessor's contention of true value, you must divide the assessment by the average ratio. Grounds for a tax appeal exist when an assessment exceeds the true value of the property, or 115% of the average ratio applied to the true value of the property.

Reassessment/Revaluation

A reassessment occurs when a municipality reassesses all properties within a certain class (e.g., all business properties within the municipality). A revaluation occurs when a municipality reassesses all properties within the municipality. In New Jersey last year, several municipalities reassessed or revalued properties within their boundaries.

The municipalities in the charts below are scheduled to implement reassessments or revaluations for 2009. The reassessment or revaluation of property by local taxing districts may increase the possibility of properties being assessed incorrectly, and assessments that arise from a reassessment or revaluation should be carefully analyzed to determine whether such assessments exceed the true value of the subject property.

Appeal Procedure and Deadline

Tax assessors are required to notify each taxpayer of the current assessment and preceding year's taxes by mail prior to February 1.

Taxpayers may appeal when the assessment of real property exceeds true value as described above. Taxpayers also may challenge denials of tax exemptions or tax abatements, and added or omitted assessments, which assessors may impose in response to new construction or the failure to include property in previously made assessments.

In order to bring an appeal, a petition must be filed with the County Board of Taxation, or a Complaint must be filed with the Tax Court. A business partnership or corporation that seeks to challenge a tax assessment must be represented by an attorney at law before the County Board of Taxation and/or Tax Court.

The deadline to appeal the annual assessment of real property for 2009 is April 1, 2009. (Recently enacted legislation extends to May 1, 2009 the deadline to appeal the assessment of real property in taxing districts where a municipal-wide reassessment or municipal-wide revaluation has been implemented for 2009. Nevertheless, we urge you to review all Notices of Assessment well in advance of April 1 so that you may evaluate whether grounds for appeal exist and, if so, meet the applicable filing deadline.)

NJ MUNICIPALITIES REVALUED FOR TAX YEAR 2009*

County	Municipalities
Atlantic	Folsom Boro
Bergen	Bergenfield Boro; Bogota Boro; Leonia Boro; Oradell Boro; Saddle Brook Township
Burlington	Bordentown Township; Fieldsboro Boro; Riverton Boro
Camden	Barrington Boro; Bellmawr Boro
Cape May	Wildwood Crest Boro
Cumberland	Commercial Township; Downe Township
Essex	Fairfield Township; Livingston Township
Mercer	Hightstown Boro
Monmouth	Colts Neck Township; Hazlet Township; Keyport Boro; Marlboro Township
Morris	Morris Plains Boro
Ocean	Berkeley Township; Toms River Township; Lacey Township; Point Pleasant Boro
Passaic	Little Falls Township; Totowa Boro
Salem	Carney's Point Township; Oldmans Township; Penns Grove Boro
Somerset	North Plainfield Boro
Sussex	Byram Township; Ogdensburg Boro; Vernon Township
Warren	Phillipsburg Town

*Please note that this information is current as of February 9, 2009.

If you believe that a property in which you have an ownership, leasehold or mortgage interest may be over-assessed and would like to consider appealing the assessment, please contact our Real Property Tax attorneys:
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NJ MUNICIPALITIES REASSESSED FOR TAX YEAR 2009*

County	Municipalities
Bergen	Closter Boro
Burlington	Evesham Township
Camden	Audubon Boro; Audubon Park Boro; Somerdale Boro
Cape May	Cape May Point Boro; Stone Harbor Boro; West Wildwood Boro
Hunterdon	Alexandria Township; Flemington Boro; Lambertville City; Raritan Township
Monmouth	Deal Boro
Morris	Mountain Lakes Boro
Ocean	Bay Head Boro; Manchester Township; Seaside Park Boro
Somerset	Bedminster Township; Bernards Township; Bernardsville Boro; Branchburg Township; Bridgewater Township; Far Hills Boro; Franklin Township; Millstone Boro; Peapack-Gladstone Boro; Raritan Boro; Warren Township; Watchung Boro

*Please note that this information is current as of February 9, 2009.

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