

TAX NOTES

When Not to Challenge Your Tax Assessment

Five common pitfalls owners need to avoid. **By Elliott B. Pollack, Esq.**

Property tax consultants, accountants, appraisers and attorneys have spilled gallons of ink writing about tax appeal strategies. Few articles address the consequences of an ill-conceived appeal, yet the results can be devastating.

Property tax administration and rules vary from state to state and, in many jurisdictions, among counties and municipalities within the same state. Expert, locally based advice is always necessary to determine whether or not — and how — to appeal a taxable value assessment.

Here are five common pitfalls the taxpayer can avoid by thinking through the merits of an appeal before filing.

1 Incurring unrecoverable costs: Even if a petition fails to proceed to a hearing or trial, the preliminary expenses of a poorly thought-out case can be considerable. In addition to the time required to assemble documents and review data, outside consultants' efforts can be wasted.

Appraisers won't work on a contingency fee basis, for example, and the property owner's appraisal fee may earn nothing more than support for the tax assessor's case.

2 Making a strategic blunder: While it is frequently not the case, a property owner should be in regular communication with asset managers. Why? Even if a tax appeal is meritorious, does it make sense to file public documents depreciating the value of your office building or land when it lies in the path of an eminent domain proceeding?

Consider also an owner competing against other landlords to land a state agency tenant searching for 100,000 sq. ft. of office space. If the potential tenant's selection depends on its determination of which location provides the most valuable space for the market lease

rate, it may be unwise to argue in a tax case that the property is worth \$30 per sq. ft. against the assessor's \$45 per sq. ft.

Likewise, a public or private entity required to mark real estate holdings to market value

should think twice about challenging an assessment when internal documents and perhaps externally obtained appraisals speak to higher numbers.

Declarations in an aggressive tax appeal may even violate loan covenants that require maintenance of specific loan-to-value ratios. Put differently, it is unwise to let the property tax tail wag the transactional dog.

3 Inflicting collateral damage: It is usually difficult for local government officials to retaliate after a judicial decision rendered in a contested case blasts the assessor's work. Yet there are venues where vengeful public servants may seek to exact a price for a successful challenge to a tax assessment. To the extent that the reduction sought is not terribly significant, it may not make sense to pursue it.

4 Disclosing confidential information: Most commercial tax appeals require owners to produce copious data for expert analysis. In preparing a case for trial, legal counsel may request financial statements, insurance policies, building plans, land-use documents, brokerage listings, communications with potential buyers, loan applications and internally and externally generated valuation projections and estimates.

The municipality or county may seek



that same information in pretrial discovery. Even if a confidentiality agreement can be obtained, the property owner must decide whether the appeal is worth the risk of disclosure that comes with providing information to a government depository. Are there some trade secrets or proprietary data so valuable that no risk of disclosure should be taken?

5 Much ventured, nothing gained: The old adage about laboring mightily to bring forth a gnat can apply in the tax appeal arena, such as when an appeal brings a taxable value reduction so small that the owner wonders why he bothered to appeal in the first place.

Even worse, some jurisdictions allow the taxing entity to seek a higher value in a tax appeal in which the owner was attempting to lower the assessment. Taxpayers should analyze the potential for this unwanted outcome with an attorney before filing the appeal.

A lower tax assessment may indeed lower tax bills, but the appeals process carries risks as well as rewards. Property owners must look carefully before taking the tax-appeal leap.



Elliott B. Pollack is the chair of the property valuation department of the Connecticut law firm Pullman & Comley LLC, the Connecticut member of American Property Tax Counsel. He can be reached at ebpollack@pullcom.com.

