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The monthly update on corporate property tax news & tax-saving strategies

PROPERTY TAX ALERT

Vol. 12, No. 11, November 2006

INSIDE

COMING SOON

- Update on Wisconsin's "Newark exemption"
- 2006 in review
- Trends to watch in 2007
- More tips & tactics
- *Practitioner Perspectives*

SHARE YOUR SUCCESS!

Did you successfully negotiate a lower assessment? Come up with a way to streamline the property tax-management function? Let us know. You could be profiled in a future case study for *PTA*! Just email the basics to roxannaguilfordblake@yahoo.com.

TIPS & TACTICS

Lower the assessment on your apartment property

Are you paying too much in property taxes for your apartment community or similar multi-family property? It's likely, warns **Deborah Davis**, president of Chicago-based **Strategic Tax Services**.

Davis, a *PTA* board member who has written articles and given presentations on these topics, agreed to share some of her strategies with readers.

Review pertinent documents

To make a case for a reduced valuation, you need to know what the assessor knows. Davis advises paying particular attention to the following documents:

- **Building permits.** Assessors receive copies of building permits and may use the construction-cost data basis for the assessment. Be prepared to demonstrate that cost does not always equal market value, either for original construction or remodeling.
- **Transfer declarations.** Assessors are copied on transfer declarations, so be sure to quantify and deduct personal property. If the sale is part of a portfolio, sale-leaseback, REIT or going-concern business, briefly describe the circumstances.
- **Property record card.** Review the property record card for accuracy. Ask what methods the assessor is using to assess your property.

Double check comparables

What the assessor considers a comparable sale may be anything but.

"Take a hard look at these sales and question the data," she counsels. "Was it really a legitimate sale or part of a corporate restructuring? Were the buyer's income assumptions a bit optimistic? Were items of personal property included in the sale?"

She provides some specifics:

- A sale/leaseback transaction is generally not considered a comparable sale, since such transactions are usually a financing mechanism for the owner and are not reflective of market value. However, owners don't always note that the transaction was a sale/leaseback on transfer declarations, so the assessor may not realize that it's not a truly comparable transaction.
- Portfolio sales may involve allocations among various properties based on the *investor's* objectives. These may not be

viable sales or they may require adjustments for assessment purposes.

- Many sales of larger properties are to REITs or part of a TIC transaction. The investment value may not reflect market value.
- An IRS 1031 exchange may not reflect market value. Was the buyer or seller under time pressure to close the deal? Was there adequate time for due diligence?
- Capitalization rates are generally lower for institutional-grade properties and higher for non-institutional and/or older properties. Assessors typically look at a pool of sales to determine cap rates. Your property may be older, have higher risk or face other issues that would call for a higher cap rate.

Address vacancy and turnover issues

Local brokers or commercial real estate companies often do market-vacancy surveys. Get copies and compare them to your property. If your vacancy rate is higher than the market, find out why and bring that data to the assessor.

Among the possible reasons:

- Older apartments often take lower-credit tenants who may leave before their lease expires.
- A new complex may offer generous rent abatements to boost occupancy. Surrounding properties may have higher vacancies until the market stabilizes.
- The property is in a deteriorating neighborhood.
- The property-management team may lack sophistication or experience.

Many assessors are willing to consider short-term significant vacancy and make a temporary reduction. Some even have a policy to provide a temporary reduction equal to 50% of the excess vacancy (often calculated by reducing the potential income of the property).

"Even in very strong markets with waiting lists, a typical unit may take up to two weeks to turnover," she explains. "That short-term vacancy, combined with any collection loss, makes it difficult for even the strongest property to obtain a vacancy/collection loss of less than 5%."

The impact of high turnover can include higher paint, carpet, cleaning and marketing costs and bad-debt expense. If the cause is not a one-time reason and is expected to continue into the next few years, the expenses need to be considered for the assessed value.

Review land-to-building ratio

Consider consolidating multiple tax parcels, Davis suggests. A larger parcel may have a slightly reduced value per unit for tax assessment purposes.

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Apartment communities are often constructed in multiple phases, frequently resulting in multiple tax parcels. Are there land parcels with no improvements on them that have the potential for future development or additional units? "If so, review whether it is appropriate to include those parcels in the overall analysis," says Davis.

Identify functional obsolescence

Look at the aspects of your property that increase your expenses or reduce the property's income potential; they have the potential to reduce your tax burden. Review the following:

- **Net rentable area versus the gross square feet.** Assessors often use gross square feet in their calculations, but this may not be in your best interest if you have a higher percentage of common areas.
- **Unit mix in light of the tenant profile for that market.** A property with mostly three-bedroom units in a market of price sensitive, young professionals or a property with mostly one-bedroom units in a community of mostly families faces marketing challenges.
- **HVAC system.** Given recent increases in gas costs, older properties with gas-driven boilers, heaters and/or cooling units are at a disadvantage over newer energy-efficient systems. The problem is compounded if each unit does not have its own meter.

Other site issues that can contribute to a reduction in value include:

- **Visibility.** If a property is obstructed or does not have good drive-by traffic, higher advertising costs may be needed to maintain occupancy. **Tip**: Use photographs of the property from the street to make your case.
- **Amenities.** Amenities (clubhouse, pool, tennis court, fitness center, etc.) may add value for tenants, but they often don't add value to the property. Examine them to see if they really contribute to the assessed value. "Many of these items have a much shorter life than the property," she warns. "If the assessor is using a cost approach, is there an adequate amount of depreciation for these items?"
- **Personal property.** If the taxable value of the real estate is quantified using an income analysis, deduct the return *on* and *of* the personal property.
- **Decks, patios and balconies.** These items tend to depreciate quickly and may need to be replaced or rebuilt every 10–15 years. An appropriate amount should be included in the replacement reserves.
- **Economies of scale.** Larger, more sophisticated owners will have efficiencies with labor (often shared among properties), management, accounting systems, maintenance, etc., resulting in lower expense ratios. A smaller property and/or portfolio may have less efficiency and a higher expense ratio.
- **Deferred maintenance.** While you may not want to broadcast a property's roof problem or leaky pipes, it can help you get a reduced valuation. Bring evidence of the problem and the cost to repair it to the assessor.
- **Management expense.** Impute a management expense, counsels Davis. For self-managed properties, an owner may not include a management expense on the operating statement. However, the typical owner (and buyer) would expect to pay for professional management. That fee is often calculated as 4–5% of effective gross income.
- **Parking issues.** Compare the parking ratio per unit to the market standard for the area. Inadequate parking may make the apartments less desirable. Excess parking space should be considered in the income analysis (assuming there is a monthly parking fee). In some markets, underground, temperature-controlled parking is the norm for Class A apartments and seniors' housing. These spaces can be costly to build, but may not translate to higher returns on sale prices or income.

TIP: WATCH OUT FOR TRICKY STATES

In California (due to Proposition 13) real property assessments are based on acquisition value, not market value. It is therefore critical to make purchase price allocations before acquisitions (especially for senior housing) and record those allocations among real, personal and intangible property assets on all deeds and transfer declarations.

Pay attention to states with tax caps. For instance, due to Michigan's cap, values must be set correctly for both new construction and acquisition, Davis says.

Worth the effort

If all this sounds like a lot of work, it is. But Davis believes such scrutiny can yield substantial sav-

ings. The multi-family market is perceived as quite strong, she says, but as with other types of property, you must demonstrate how your apartment community is different. "Identify unique issues that impact the valuation of your property and quantify the valuation impact of those issues—you may have a case for a reduction," Davis advises.

Editor's note: *Deborah Davis can be reached at ddavis@strategictaxservices.com.* ✦

Minnesota incentives challenge dismissed

Yet again, courts deal with an incentives case without addressing the Commerce Clause issue.

In *Olson v. Minnesota (*Minn. District Court, Ramsey County, Second Judicial District, No. C8-05-2727*),* the court dismissed the case, finding the plaintiffs lacked standing to challenge Minnesota corporate income, personal income, property, and sales and use tax credits and other incentives under the Job Opportunity Building Zones (JOBZ) Program and the Biotechnology and Health Sciences Industry Zone Program.

Specifically, the complaint was dismissed because the taxpayers showed no evidence of injury; without injury, their claims did not meet the threshold for standing.

The pattern is becoming familiar. In *Cuno* and *Blinson v. North Carolina*, the issue was whether the plaintiff had standing to challenge the incentive; in *Northwest Airlines, Inc. v. Wisconsin Dept. of Revenue*, it was whether federal law preempts the Commerce Clause question.

What has yet to be addressed is whether the dormant Commerce Clause of the U.S. Constitution bars property tax exemptions that are available only to in-state companies. As noted in the August 2006 issue of *PTA,* those seeking resolution may have a long wait. **Betty McIntosh**, director, location incentives group, capital markets for **Cushman & Wakefield**'s Atlanta office, says this strengthens her observation after the Northwest decision: Courts don't seem too interested in getting into the merits of these cases.

Looking ahead

Taxpayers wanting to preserve incentives shouldn't become complacent: Challenges continue to be mounted; eventually, one may be heard in its merits. **Mary Benton**, a partner with **Alston & Bird** in Atlanta, thinks someone will figure out how to bring a case that will get past the standing issue.

"If they could present a study that showed because of providing credits to businesses, the millage rate rose for property tax purposes or the corporate income tax had to be raised because they couldn't shore up the hole left from providing the tax incentives, they could show direct injury," she speculates. "But that can be difficult because the state can come back and say there are other reasons for increasing the millage rate or increasing the corporate tax rate or some other burden. It is going to take some type of economic analysis that ties the incentive directly to a tax increase directly on the persons challenging the incentive."

While there's been some discussion of a legislative fix, she deems that unlikely. "They believe that incentives bring business to their state and the local jurisdictions, that they bring jobs and impact the economy in a positive way." ✦

NH school funding scheme ruled unconstitutional

The New Hampshire Supreme Court has found the state's education funding law to be unconstitutional, and that may mean property tax changes.

In *Londonderry School District SAU #12 v. New Hampshire,* the court gave lawmakers until June 30, 2007 to define what constitutes "an adequate education." If they don't, the court said it would "be required to take further action." That could involve appointing a special master to aid in the determination of the definition of a constitutionally adequate education—and what an adequate education will cost.

Some lawmakers responded by pushing for a constitutional amendment on this month's ballot that would strip state courts of authority over school funding. But that attempt failed, so, says **Dave Juvet**, vice president of the **New Hampshire Business and Industry Association**, "we are in a bit of a holding pattern."

Property tax hit—or shift

Don't look for any immediate changes, counsels Juvet. He expects lawmakers to wait until the last possible moment to meet the court's demands. Once the lawmakers define "an adequate education," the state has to figure out how to pay for one. That's not a task they are relishing, he notes.

If legislators do answer the challenge, he expects them to turn to property taxes, given that

the governor has already threatened to veto any new sales tax or income tax hike.

A revised school-funding scheme may *not* mean a tax hike, however. Since the issue in this case involves inequitable funding, the solution could involve a state-imposed property tax that would replace some local property taxes, Juvet says. So taxpayers may merely change "*who* they pay, not *what* they pay." ✦

Supreme Court denies *cert* in several property tax cases

The U.S. Supreme Court has yet to hear any property tax cases, but it has denied *cert* to several, including the following:

- **California:** Los Angeles County had asked the High Court to determine whether federal contractor overhead property may be subject to state property tax, even if a portion of that overhead is related to federal contract activity. The contractor argued that an amount of overhead property proportional to the amount of work charged to federal fixed-price contracts was immune from tax because the federal government was the real owner of such property, and the California Court of Appeal agreed. (*County of Los Angeles v. Northrop Grumman Corp., Dkt. 05-1500*)
- **Louisiana:** Interstate pipeline companies had asked whether their Due Process rights were violated by the remedy proposed for their payment of an unconstitutional property tax. The companies had successfully challenged the assessment ratios applied to their properties. However, the Louisiana Appellate Court refused to order an immediate refund based on applying the proper ratio to existing assessments. Rather, it approved a de novo revaluation of taxpayers' property by local assessors. The Louisiana Supreme Court denied review. (*ANR Pipeline Co. v. Louisiana Tax Commission, Dkt. 05-1606*)
- **Minnesota:** A taxpayer had asked whether its Due Process rights were violated when its challenge to an assessment was dismissed for failure to timely provide information that the tax court, in previous challenges, had held did not need to be produced. The Minnesota Supreme Court held that it was required, and prior, contrary tax court decisions did not create binding precedent. (*Kmart Corp. v. County of Stearns, Dkt. 05-1655*) ✦

ELECTION RESULTS: VOTERS ENACT EXEMPTIONS, CAPS

Several property-tax measures were approved Nov. 7. Here's a selected overview of those with a direct impact on business:

- **Arizona:** Voters approved a constitutional amendment to reset the property tax cap to the actual levy of each taxing entity in 2005. (Proposition 101)
- **Alabama:** Voters approved a constitutional amendment to require the levy of additional local property taxes in school districts currently levying less than 10 mills for school purposes. (Amendment 2)
- **Georgia:** Voters approved a measure to provide an exemption for farm equipment held under a lease-purchase agreement. (Referendum A)
- **Idaho:** Voters approved a nonbinding advisory supporting the recent reduction in property taxes that was offset by an increase in the sales tax from 5% to 6%.
- **Louisiana:** Voters approved a constitutional amendment to exempt motor vehicles from municipal property taxes (Amendment 4) and an amendment to exempt all artwork listed as consignment articles by an art dealer. (Amendment 5)
- **New Jersey:** Voters approved a constitutional amendment to fund property tax reform by dedicating an amount equal to the revenue from a 0.5% sales tax rate (i.e., one-half of the increase from 6% to 7% that became effective on July 15, 2006). (Question 1)
- **Oklahoma:** Voters approved a constitutional amendment directing the legislature to enact procedures for applying to the county assessor for the freeport exemption. (Question 734)
- **South Carolina:** Voters approved a constitutional amendment to limit increases in the taxable value of real property, adjusted for improvements and losses, to 15% every five years, absent a transfer of the property. (Amendment 4)
- **Utah:** Voters approved a constitutional amendment authorizing the legislature to enact an exemption for tangible personal property that generates an inconsequential amount of revenue. (Amendment 1)
- **Virginia:** Voters approved a constitutional amendment authorizing legislation that would let localities provide a partial exemption for property with new structures and improvements in conservation, redevelopment or rehabilitation areas. (Question 3)

ARKANSAS

Millage rollbacks or property tax caps, such as those in Amendments 59 and 79, do not apply to a levee-district reassessment. (*Arkansas Attorney General Opinion, No. 2006-149*)

CALIFORNIA

For property tax purposes, the offices of county treasurer, county auditor and county tax collector may be consolidated and held by the same person. In addition, a county treasurer who also was the county auditor could be appointed to a county retirement board. (*Opinion No. 06-105, Office of the California Attorney General*)

KENTUCKY

Distilled spirits produced by a liquor manufacturer qualified for the exemption provided by KRS 132.097 for personal property held in a warehouse for shipment to an out-of-state location. Additionally, the distilled spirits were subject to reduced local taxation under KRS 132.099, and liquor in the process of being distilled (in-process) was exempt under KRS 132.200. The court found that the legislature had unequivocally created a broad tax exemption for personal property, and the statutory language did not exclude alcohol from exemption. Further, the language of KRS 132.020 specifically included distilled spirits and distilled spirits inventory in the categories of in-process and raw materials. The question of whether the exemption under KRS 132.200 applied to white oak barrels that were used to produce bourbon and then resold for other purposes was remanded for consideration by the Kentucky Board of Tax Appeals. (*Jim Beam Brands Co. v. Commonwealth of Kentucky, Franklin County Circuit Court, No. 05-CI-1634*)

LOUISIANA

An assessor was directed to enumerate, list and assess all properties purchased by a taxpayer at a property tax sale on the 2005 tax roll and to prorate the tax assessment on the basis of the percentage of interest the taxpayer purchased. The taxpayer bought multiple tax sale properties and recorded tax deeds in 2004. The properties were assessed in the taxpayer's name, but were not reflected on the 2005 tax roll. (*Farmco, Inc. v. Wilson, Louisiana Appellate Court, First Circuit, No. 2005 CA 2132*)

State Updates

MASSACHUSETTS

A taxpayer demonstrated his real property assessments were excessive because the assessor assigned an incorrect highest and best use for the property which inflated the value of the buildings for the two years in question. The assessor found the property's highest and best use to be medical offices despite the fact that only about 10% of the available space was leased as traditional medical office space. The assessor testified that medical office rents were ordinarily higher than non-medical office rents. The taxpayer was able to prove that the actual highest and best use was as a multi-tenanted commercial office building with some limited medical uses. (*Culbert v. The Board of Assessors of the Town of Brookline, Massachusetts Appellate Tax Board, Nos. F274830 and F278507*)

A certified tree surgeon was entitled to an exemption from the personal property tax on his chainsaw because he met the definition of a "mechanic" and thus the "tools of his trade" were exempt. The taxpayer also demonstrated that his backhoe and stumpgrinder were overvalued and received partial abatements on those tools. However, he was unable to prove that his remaining inventory was overvalued or that his backhoe was eligible to be taxed at a lower rate. (*Cocchi d/b/a Hickory Rock Farm and Paul's Tree Service v. Board of Assessors of the Town of Ludlow, Massachusetts Appeals Court, Nos. F271990 and F271991*)

A taxpayer demonstrated that the assessment of his mixed-use building was excessive because the assessors failed to properly consider the substantially deteriorated condition of the building's electrical and plumbing systems. Furthermore, none of the properties that the assessors relied upon as comparable properties contained similar interior deficiencies. (*Correa v. Board of Assessors of the Town of Plymouth, Massachusetts Appellate Tax Board, No. F272650*)

MICHIGAN

A new tax is imposed for commercial forestland that is subject to a sustainable conservation easement. The tax is equal to the annual specific tax levied on commercial forests, less 15¢ per acre. An applicant for the reduced tax rate is required to pay a nonrefundable application fee of $2 per acre, subject to a minimum of $200 and a maximum of $1,000. If commercial forestland subject to the easement is used in violation of the provisions, the owner (in addition to any other penalties) must pay a penalty per acre for each year in which the violation occurred equal to the difference between the new specific tax and the specific tax that otherwise would be paid on commercial forests. (*SB917*)

Effective January 1, 2007, a property recapture tax is created to recapture taxes owed on qualified forest property that was converted by a change in use after December 31, 2006, and no longer qualified for a tax exemption. "Converted by a change in use" means that, due to a change in use, the property is no longer qualified forest property as determined by the assessor of the local tax collecting unit, based on a recommendation from the Dept. of Natural Resources. The recapture tax is the obligation of the person who owned the property at the time the property was converted by a change in use. (*SB913*)

Qualified forest property is exempt from Michigan property taxes levied by local school districts to the extent provided in the revised school code. To claim the exemption, the property owner must file an approved forest management plan, or a certificate from a third-party organization by December 31. (*SB912* and *SB914*)

NEVADA

Regulations covering the partial abatement of Nevada property tax on property with buildings or other structures that meet or exceed certain "green" standards have been enacted. (*Uncodified Regulations, Nevada Economic Development Commission)*

NEW YORK

Challenges based on assessor corruption were properly dismissed for lack of standing. The taxpayers alleged that a systematic bribery scheme involving tax assessors resulted in the underassessment of properties belonging to bribe-paying owners and the overassessment of all remaining properties. However, the taxpayers' allegations failed to show that the corruption caused them special dam-

age, different in kind and degree from the community in general. (*315-321 Realty Co. Assoc., LLC v. City of New York, New York Supreme Court, Appellate Division, First Department, No. 9044-9044A*)

OHIO

The Tax Commissioner did not have the statutory authority to backdate a property tax exemption despite its own unexplained delay in granting the exemption. Due to the DOR's delay, the property was only eligible to claim the exemption beginning in the 2005 tax year. The taxpayer had sought to have the DOR's exemption order backdated to the 2004 tax year. However, neither the court nor the commissioner had the authority to make such a change. (*C.P. Snow Properties, LLC v. Wilkins, Ohio Board of Tax Appeals, No. 2005-V-540*)

The Board of Tax Revision was within its authority when it raised a county appraised land valuation for a tract of land to reflect a recent comparable sale of an adjacent tract of land. (*Soin v. Greene County Board of Revision, Ohio Supreme Court, No. 2005-2070*)

OREGON

A taxpayer was assessed penalties because he did not demonstrate good and sufficient cause for failure to timely file personal property tax returns. The taxpayer argued that taxing his personal property, specifically a climbing wall, put him at a competitive disadvantage. However, there was no provision permitting the court to waive a penalty based on economic consequences to the taxpayer's business. (*Stoneworks Climbing Gym, Inc. v. Washington County Assessor, Oregon Tax Court, No. MD 060091A*)

PENNSYLVANIA

The Pennsylvania Supreme Court affirmed a lower court's dismissal of an equitable class action challenging the constitutionality of Allegheny County's property tax assessment practices under the Uniformity Clause. The members of the class alleged that the County's assessment system over-assessed lower-value houses and under-assessed higher-value houses. They further asserted that the county failed to follow its own mass appraisal standards. The class action was dismissed because the members failed to allege that the assessment system was deliberately operated to discriminate against any subclass of properties and because adequate administrative remedies were available under state law. In affirming the decision, the Supreme Court found that the members of the class failed to raise a substantial constitutional issue in the context of their request for mandamus. (*Beattie v. Allegheny County, Pennsylvania, Pennsylvania Supreme Court, No. 8 WAP 2005*)

SOUTH CAROLINA

A taxpayer's lease for various equipment and fixtures would likely be deemed a financing tool thereby placing the burden of ownership for personal property tax purposes on the taxpayer rather than the lessor. (*Opinion of the Attorney General, P400-357*)

TEXAS

The East Coke County Hospital District has the authority to operate a long-term healthcare facility and levy property taxes to maintain and operate the facility, according to the Texas attorney general. A long-term healthcare facility established by Sec. 285.101 serves a "hospital district purpose" for which the district may levy and spend taxes. (*Opinion of the Texas Attorney General, No. GA-0467*)

A furniture rental corporation that successfully challenged the excessive appraisal of its tangible personal property for Texas property tax purposes was entitled to an award of attorney's fees under Sec. 42.29 of the Texas Tax Code. (*Aaron Rents v. Travis Central Appraisal District, Texas Court of Appeals, Third District, No. 03-05-00171-CV*)

VIRGINIA

A taxpayer's brewery equipment was correctly assessed by a county at the local machinery-and-tools tax rate because the property could not be considered part of the realty, and was ancillary to the taxpayer's primary business, of a restaurant. The taxpayer operated the brewery in conjunction with the restaurant under a lease agreement. The taxpayer objected to the machinery-and-tools tax assessment, contending that all fixtures associated with the brewery should be regarded as part of the real estate and taxed accordingly. In this case, the intention to make the brewery equipment a permanent part of the realty was not clear. The lease agreement confirmed that the intention of the lessor was to have a first class restaurant on the premises. Because of the lease's short duration, the property may not have been used as a restaurant and microbrewery in the future. The lease also specified that the taxpayer could change the nature of the business to a different kind of restaurant. Furthermore, the lease restricted any subletting of the property to a person who would maintain a first class restaurant. These provisions failed to clarify an intention by the owner to have the brewing equipment become a fixture. (*Ruling of Commissioner, PD06-106*)

WISCONSIN

The Tax Appeals Commission failed to comply with procedural requirements in deciding a property tax case and, therefore, the decision was remanded. Only one member of the commission was present at the evidentiary hearing at which both parties presented testimony regarding the taxability of multifunction devices. The attending commissioner retired after the hearing and before a decision was reached in the case. The commissioner was not consulted and had no involvement in issuing the commission's decision. The commissioner's failure to report his findings and observations to absent commissioners violated a procedural requirement and, therefore, the court remanded the decision. (*Xerox Corp. v. Wisconsin Dept. of Revenue, Wisconsin Circuit Court, No. 05CV3250*)

WYOMING

Gov. Dave Freudenthal has proposed a one-year property tax holiday, suspending the collection of 12 education mills currently imposed by the state. (*Press Release*)

The Dept. of Revenue was required to apply economic obsolescence to an electric utility company's construction work in progress (CWIP) as it did to all its other assets in determining the value of the company for property tax purposes. The DOR relied on two different cost models to determine the value of the electric utility company for property tax purposes. For each model, the DOR calculated a rate of economic obsolescence. The DOR used those rates of economic obsolescence to adjust the value of the company's assets pertinent to each model, but did not apply those rates to adjust the value of the company's CWIP. Therefore, the DOR's treatment of CWIP was contrary to the Wyoming statutes, the DOR's Rules and Regulations, or generally accepted appraisal standards. (*In the Matter of the Appeal of Pacificorp, Wyoming State Board of Equalization, No. 2005-74*)

SPOTLIGHT ON NEW MEXICO

TAXABLE PROPERTY

All tangible property in New Mexico, real and personal, is taxable unless specifically exempted.

EXEMPTIONS AND EXCEPTIONS

Exemptions and exclusions are provided for a variety of properties, including animals, commercial business property of a new business facility, enterprise zone leases, freeport property in transit, tangible personal property, inventory and leased pollution-control property.

Tax-favored property includes agricultural land, communications system property, enterprise-zone property, minerals, oil and gas property, and water-utility property.

VALUATION PROCEDURE

Property generally is valued as of Jan. 1, but special rules apply to the valuation date for livestock, construction works in progress and tangible personal property belonging to construction contractors.

A change in value from property destroyed or damaged is not reflected in the taxable value until Jan. 1 of the following year.

Absent a statutory exception, the relevant measure of value is market value. The property tax is levied only on a specified percentage of the value. This tax ratio is 33.33%.

ASSESSMENT PROCEDURE

Taxpayers bear the burden of proof; the assessor is presumed to be correct.

Owners of centrally assessed property must file a report annually with the Dept. of Revenue and Taxation by the last day of February.

Owners of locally assessed real property that have, in the preceding calendar year, made improvements costing more than $10,000 must file a report with the county assessor by the last day of February.

PAYMENT DUE DATES

Property taxes generally are payable to the county treasurer in two equal installments. The first installment is due on Nov. 10 of the year in which the tax bill was prepared and the second installment is due on April 10 of the following year.

REFUNDS

In lieu of filing a valuation notice protest, property owners may pay the tax and file a refund claim. The claim for refund represents a civil action; for locally assessed property, the claim is filed in the district court of the county in which the property was valued. (Claims for refund of tax paid on centrally assessed property must be filed with the district court for Santa Fe County.)

The refund claim must be filed by the 60th day after the first installment of the property tax for which the refund claim is made became due.

ASSESSMENT CORRECTIONS

After delivery of the property tax schedule to the county treasurer, information on the schedule may be changed only:

- by the county treasurer, who may correct obvious clerical errors or who may cancel multiple valuations of the same property in a single tax year;
- by the county treasurer, to remove from the tax schedule personal property that cannot be located, identified or collected on;
- as the result of a protest, including a refund claim;
- by the DORT or by court order as the result of a proceeding to collect delinquent property taxes;
- by court order resulting from an action by a property owner;
- by the DORT for any reason applicable to a county treasurer or a court; or
- by the Dept. of Finance and Administration if there was an error in the certification of tax rates.

Omitted property may be assessed for up to 10 years.

APPEALS

A taxpayer dissatisfied with a valuation may file a letter of inquiry, and the assessor may elect to resolve the question without going through a formal protest.

To begin the formal process, the taxpayer can file a petition with the county protest board within 30 days from the mailing of the Assessment Notice. (Assessments on centrally assessed property get a hearing before the Property Tax Division.)

A property owner dissatisfied with the results of a protest hearing may appeal to the district court within 30 days of when the state hearing officer or the county valuations protests board files a written order. The court may set aside the order only if it finds that:

(1) the hearing officer or board acted fraudulently, arbitrarily or capriciously;
(2) the order was not supported by substantial evidence; or
(3) the hearing officer or board did not act in accordance with the law.

A district court decision may be appealed to the circuit court and then to the New Mexico Supreme Court.

For more information, visit the Property Tax Division's home page at www.state.nm.us/tax/ptd/ptd_hom1a.htm.