

## REAL ESTATE TAX APPEALS – FACTS, DATES AND DEADLINES



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March 2010

It is well recognized that the economic downturn has decreased property values in communities throughout New Jersey and elsewhere, and has also triggered an increased awareness in consumers of cost-saving measures. This, in turn, has caused more property owners to explore whether the respective property assessments upon which their taxes are based are inflated, thereby resulting in improperly high taxes. Consequently, the number of tax appeals filed in recent years has substantially increased. Given the current economic climate, a tax appeal is a strategy worth seriously considering by owners of both residential and commercial property. Important facts regarding tax appeals are discussed below.

Contrary to the impression conveyed by its name, a tax appeal challenges not the taxes themselves imposed by the municipality but, instead, the assessed value of a property set by the municipal tax assessor, which is established as of October 1st of the pre-tax year. This means that, for example, for 2010, the property assessment upon which taxes are based is the assessed value as of October 1, 2009. Notices of the assessment are sent to property owners on an annual basis, generally in late January or early February of the tax year. The assessed value itself does not necessarily represent the market value of the property, unless the municipality was the subject of a revaluation or reassessment. In order to determine the market value to which the assessment translates, the "average ratio" for the taxing district, established by the Director of the New Jersey Division of Taxation and which

changes each year, must be applied to the assessed value. In addition to an "average ratio," there is in each municipality an "upper limit" and a "lower limit" ratio. Relief on a tax appeal would likely be warranted if the market value of the property as of October 1st is less than the market value at the "upper limit" ratio, but typically not if the market value falls within the range between the upper limit ratio and the lower limit ratio. The assistance of an appraiser is often necessary in determining the market value of a property in connection with a tax appeal.

It is important to recognize that the deadline for filing a tax appeal is April 1st of each year (extended to May 1, in most instances, if there has been a revaluation or reassessment in the municipality) -- a firm date that cannot be extended. If the assessed value of the property is less than \$1 million, the appeal must be filed by this date with the County Board of Taxation in the county where the property is located. If the assessed value is \$1 million or more, the appeal can be filed with either the County Board of Taxation, or the Tax Court of New Jersey. If the taxpayer is successful on appeal in reducing the assessment, the taxpayer will obtain a refund of taxes paid based on that assessment, or, more likely, a credit in the appropriate amount to be applied against future taxes.

Under State law known as the Freeze Act (N.J.S.A. 54:51A-8; N.J.S.A. 54:3-26), any reduced assessment resulting from a tax appeal, whether achieved through

judgment after a hearing or a settlement negotiated by the parties, is binding on the municipal assessor and the taxing district for a period of three years (i.e., the tax year for which the appeal was filed, and the two subsequent years) in the absence of a substantial change in the value of the property. Such change in value can result, for example, from physical changes to the property or changes in the surrounding area, or if there is a revaluation of all property in the municipality. Significantly, the reduced assessment during this period binds only the municipal assessor and the taxing district, but not the taxpayer, leaving the property owner free to file a subsequent tax appeal during the freeze period if warranted by the circumstances.

An extremely important requirement applies to owners of income producing property who, if they fail to comply with it, will lose the right to proceed with an appeal challenging the assessment. State law (N.J.S.A. 54:4-34) establishes a specific procedure, commonly known as a "Chapter 91 request" to aid the valuation of income-producing property by which the municipal tax assessor can request income and expense information from property owners. This statute has as its purpose to assist municipal tax assessors in discharging their responsibility for property valuations by providing them with timely access to fiscal information relevant to the value of the property. The Chapter 91 request is typically sent in the summer or fall of the pre-tax year. A taxpayer must respond to the request within a fixed period of 45 days, which cannot be extended. Significantly, in order to promote timely compliance, the statute imposes the sanction of dismissal of an appeal by a taxpayer who fails to timely

respond. Municipalities have begun to more frequently resort to this sanction to decrease the number of tax appeals.

A property owner who has failed to timely respond to a properly served Chapter 91 request has only the very limited remedy of a "reasonableness hearing" on the property assessment. The sole question that may be explored at such a hearing is whether the valuation could reasonably have been arrived at given the data available to the assessor at the time of valuation. The only issues able to be raised are the reasonableness of the underlying data used by the assessor, and the reasonableness of the methodology used by the assessor in arriving at the valuation. Unless the assessment is shown to be completely unfounded, the assessment is likely to be upheld, particularly in light of the presumption of correctness afforded property assessments. Information sought by the Chapter 91 request but not timely supplied by the property owner cannot be used at the hearing. Simple diligence by a property owner in responding to a Chapter 91 request can avoid this unfortunate result.

As demonstrated above, there are specific requirements that must be satisfied in pursuing a successful property tax appeal. In light of these facts, the assistance of knowledgeable legal counsel and a skilled property appraiser provide a distinct advantage to property owners considering filing a tax appeal.