

Filing a property tax appeal in New Jersey, under the right circumstances, can result in significant tax savings with respect to many different types of properties, including residential, commercial and industrial properties.

The deadline for filing a tax appeal in New Jersey is April 1. Therefore, the next time one could consider filing an appeal is April 1, 2010. This deadline is established by statute, and appeals received by the County Tax Board or New Jersey Tax Court after April 1 will be dismissed as being not timely filed. N.J.S.A. 54:3-21.

Before filing an appeal, property owners should carefully review their assessment to determine whether an appeal is appropriate. The value of a property will be determined as of October 1 of the pretax year. Therefore, an appeal filed in 2010 will be determined by the value of the property on October 1, 2009. Usually, attorneys who practice in this field will handle these matters on a “contingency fee” basis, meaning that the attorney will not receive a fee unless the appeal is successful. Also, under that fee arrangement, the attorney will analyze the property owner’s assessment to determine if an appeal is appropriate usually for no fee.

As noted above, the filing deadline is April 1. N.J.S.A. 54:4-38.1 provides that every Assessor prior to February 1st shall notify by mail each taxpayer of the current assessment and the preceding year’s taxes. This notice is usually in the form of a small green postcard. However, taxpayers are well-advised not to rely upon receipt of such notice to trigger their consideration of a potential appeal by the April 1 deadline.

A taxpayer must be current on all outstanding taxes and municipal charges when the appeal is filed. N.J.S.A. 54:3-27 provides that a taxpayer filing an appeal from an assessment must pay the total of all taxes and municipal charges due up to and including the first quarter of

all such taxes and charges due for that year; this includes all prior years' taxes and charges as well.

It is worth noting that, besides owners filing appeals, tenants have standing to file appeals as well where they are the taxpayer. Village Supermarkets Inc. v. West Orange, 106 N.J. 624 (1987).

Tax appeals will be decided in one of two venues — either the County Tax Board in the county where the property is located; or in the New Jersey Tax Court. Taxpayers whose assessments exceed \$750,000 may appeal directly to the Tax Court. Even taxpayers who choose to file directly to the County Tax Board have the right to file an appeal to the Tax Court from the County Tax Board's decision; the Tax Court will hear that appeal de novo.

Owners of income-producing properties must be very wary of Chapter 91 information requests from the Assessor. N.J.S.A. 54:4-34 (known as "Chapter 91") allows the Assessor to mail a request for income and expense information to property owners. The taxpayer must respond to these requests within forty-five (45) days. If no response is supplied, or if the response is not timely, a tax appeal in the following year is subject to dismissal. In Ocean Pines, Ltd. V. Borough of Point Pleasant, 112 N.J. 1 (1988), the New Jersey Supreme Court upheld the validity of this statute, saying that the statute is reasonably related to the state's legitimate interest in the timely receipt of economic information necessary for accurate valuation of property.

Finally, the New Jersey Freeze Act, N.J.S.A. 54:51A-8 and N.J.S.A. 54:3-26, provides that the assessment reduction achieved in a tax appeal shall be "frozen" in place for two (2) years following the year of appeal. The Freeze Act binds the municipality, but not the taxpayer, who may file another appeal if he or she so chooses. The municipality may avoid the effect of the

Freeze Act if, in the two (2) years following the appeal, it performs a municipal-wide revaluation, or if it contends that the property has undergone “changes in ... value.”

Environmental Contamination and Impact on Value.

One of the most significant developments in New Jersey law governing real estate tax appeals is the recognition by the courts that environmental contamination and regulations can affect value, and that assessors must take such impacts into consideration in determining the proper assessment for a piece of property.

Among the first cases in the nation to deal with the issue of the impact of environmental contamination on value and the weight that will be accorded to that impact by the courts are Inmar Associates, Inc. v. Borough of Carlstadt, and its companion case, GAF Corporation v. Borough of South Bound Brook, 112 N.J. 593 (1988). In Inmar, the New Jersey Supreme Court acknowledge the impact on value of the statutory and regulatory framework:

There will be no avoiding the economic effect of these regulatory programs. They will undoubtedly affect the true value of real property.

Even more firmly, the court rejected the arguments of the municipalities that “public policy” in favor of environmental protection dictated that such “effects on value must be disregarded.” Relying on the New Jersey Constitution and New Jersey law, the court affirmed the right of a taxpayer to be assessed pursuant to equally applied standards of true value.

Cases are now being litigated with respect to the issue of “stigma.” This applies to properties which may not be directly contaminated, but which may be adjacent to contaminated properties. The issue of “stigma” also applies to properties which were once contaminated, but are now cleaned up. The Courts and assessors alike are recognizing that these properties,

affected as they are by the “stigma” of nearby or recent environmental contamination, have reduced value in the market, and the assessments on those properties must reflect that fact.

Conclusion

With careful analysis and in the appropriate circumstances, a property owner or tenant responsible for taxes can file a tax appeal and achieve a significant reduction in property taxes. Properties which have been impacted by environmental issues are particularly ripe for consideration in this regard. Taxpayers are advised to consult with specialists in this area and to determine whether an appeal prior to the April 1 deadline might be beneficial to the bottom line.

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