

## TAX NOTES

# Assessors Exploit Their Advantage

Mountains of data give tax authorities clout in assessment disputes, but owners can fight back.

By Joel R. Marcus, Esq.

In the late 1970s, property owners were on an equal footing with the local assessor. In those days it was almost impossible to obtain important information about properties such as sales prices, recent construction costs and current financial statements. Appraisers reigned supreme, as they had the best collection of information about properties. Their numerous past assignments to value properties for banks, developers and lawyers enabled them to amass a database of tax assessment information useful in protest proceedings.

Over the years, changes in reporting laws and efficiencies in data collection technology shifted the knowledge base advantage to the assessor. In many jurisdictions today, the tax authorities compel taxpayers to annually produce income and expense statements, sales data, closing statements, rent rolls, escalation clauses, renewal options and lists of vacancies. In most jurisdictions, building permits, sales tax on construction costs and even building plans and zoning descriptions are available to governmental officials, just for the asking.

Furthermore, the advances in technology put the necessary valuation information a keystroke away from the assessor. In New York City, for example, all commercial property owners must annually report their income and expenses, provide a breakdown of expenses and list vacancies.

Tax authorities compare this information along with income tax, sales tax and other confidential taxpayer filings, creating profiles that even the taxpayer cannot see. And finally, computer ticklers alert the assessor to new sales transactions as well as building permit applications.

## Not a level playing field

Make no mistake, assessors have more information than ever before and the ability to access it quickly. While some of this data may be available to property owners and their tax attorneys, a sizable amount of valuation data is out of the public's reach. That's due to the cumbersome Freedom of Information laws, the way data is compiled and the confidentiality rules ostensibly made for the protection of property owners. However, these confidentiality rules don't apply to governmental bodies.

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Owners typically use many different attorneys, accountants and architects on numerous, unrelated building activities. In so doing, they fail to capture and compile critical information. When property taxes are contested, the assessor enjoys the distinct advantage of bountiful information to use against an owner.

The fact that the tax authorities maintain copious information on properties comparable to an owner's property compounds the problem. They can, and will, use this information against the owner in a tax appeal. It sounds like the Star Chamber (17th century British court that used arbitrary, secretive proceedings that violated personal rights)

and often operates that way, since privacy laws actually prohibit the assessor from revealing information they possess concerning a neighboring property. Nonetheless, that won't inhibit their internal use of the information to make an owner's assessment higher or to turn down their appeal.

The real danger isn't only that assessors have more information than the taxpayer, but that they may not quite understand the data or its implications for a property's valuation, causing assessors to reach the wrong conclusions, to the taxpayer's detriment.

## Counter attack

Despite the distinct advantage assessors' hold, owners can take three steps to meet this challenge and prevail:

- Commercial property owners must realize that their activities are being monitored and compiled. Consequently, they need to begin capturing and computerizing the same types of information assessors maintain. An owner's property tax attorney should be able to assist in the data gathering.

- Owners and their attorneys can subscribe to broker services such as Costar Group, which offers details on vacancies and lease terms in urban areas. They also can join the Institute for Professionals in Taxation (IPT) or their local real estate board, where court decisions and appraisal data are often disseminated.

- Choosing the appropriate tax counsel is the most effective strategy for fighting an unfair assessment. Counsel should use the Freedom of Information laws to gather all available data from government records, develop their own programs to dissect the voluminous information on comparable properties and obtain recent court records for relevant information.

The age-old axiom applies in this case: to be forewarned is to be forearmed. ■



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