

Appealing Property Taxes During a Transaction

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In June and July of every year, commercial property owners and their respective agents are busy appealing the assessed values of their property taxes. But for some, the May 31st commercial property tax filing deadline has come and gone, and of course there are always those unfortunate owners who missed the deadline to file an appeal. At times, these owners' properties are grossly overvalued and they are "stuck" with a property tax bill that can be quite high, or are they?

There is a special provision in the tax code that allows owners to file a "late" protest. As one might suspect, there are some restrictions to qualify. First, there cannot have been an appeal filed and completed during the "regular" protest period. Second, the value must be over-assessed by one-third (e.g. market value at \$7.5 million, assessed value at \$10 million). In the end, if an owner does qualify, there will be a 10 percent penalty assessed. Nonetheless, every year we have clients taking advantage of this provision that achieve substantial reductions in their property taxes. The deadline for a "late" protest is January 31, 2013.

Investors and buyers should especially take note of this late protest period and learn how to navigate this process. Here's why – many investors who take advantage of this provision may not acquire a property until after the appeal deadline or in some cases, a property may be in due diligence during the protest period. As such, there are certain things to keep in mind as a buyer:

The seller has little to no financial incentive to lower the property taxes if the closing is a certainty. Buyers have two options:

- o First, ask the seller to not appeal or, ask the seller to withdraw any appeals they have open. This leaves the buyer with the possibility of filing a "late" protest. The positive – the buyer has complete control over the process. The downside – achieving a reduction that qualifies under the late provision could be unlikely.
- o Second, ask the seller to file/execute an appeal on your behalf. There is a stronger likelihood of a reduction since there are no restrictions under a "regular" appeal. However, if the deal closes and transacts at a higher value than what was settled, then it could irritate the respective appraisal district. They could feel slighted if they were led to believe a property was overvalued when it was under contract at a much higher price. Thus, future successful appeals as a new owner could be more onerous to achieve.

Typically, we recommend our clients implement the first option for a few reasons. First, it is best to lose the battle and win the war. For most assets, the hold period is three to five years, and it makes most sense to manage your taxes over that time period than having a short-term win (especially if the taxes are prorated at closing). Second, in most scenarios the assessed values are already lower than the sales price. The buyer is usually receiving the benefit of lower taxes for a fraction of the year, and the likelihood of a large reduction is low.

The only time we recommend the second option is if the transaction price is lower than the assessed value. In this case, it is pertinent that the seller appeals the value and gets it reduced to the purchase price.

The late filing protest period is a complicated process and each jurisdiction and transaction has its own unique factors. What is MOST important is to engage a professional before acquisition who can guide you through the process and make the appropriate recommendation.