nyrej

Annual property assessments in New York City: Should you file a tax assessment protest?

January 21, 2020 - New York City

Peter Blond,
Brandt, Steinberg, Lewis & Blond LLP

Much has changed since the 2019/20 New York City assessment roll went “final” in late May of 2019. That’s when our state and local legislators seemingly declared war on the real estate community. First, New York State introduced the new residential rent laws. Then, the City Council turned their attention to commercial vacancy and passed regulations enabling annual oversight. Next, why stop at residential rent regulation when you can regulate commercial rents as well? Regulations and electronic oversight are the framework for new monetary penalties and higher real estate taxes for city property owners.

More worrisome than new penalties are the declining market values of both multifamily and commercial real estate, due in no small part to the aforementioned governmental interference. There’s no doubting that values have already declined so assessments should decline too, right? New property tax assessments usually arrive on or about January 15th in New York City via your annual Notice of Property Value. Notices are normally mailed by the New York City Department of Finance in mid- to late-January and are immediately available upon release on DOF’s website. The release of the new assessments commences the 2020/21 real estate tax protest filing period that concludes on March 2nd. These new assessments will impact New York City tax bills starting July 1st. I doubt assessed values will be down for any particular property class or neighborhood despite the obvious decline in market prices. You only need to understand the assessor’s modus operandi to appreciate my stance (New York City assessors are currently using 2018 income and expense performance to value all properties for taxes that run through June of 2021). Needless to say, it’s not 2018 anymore.

By law, and in practice, assessors use a property’s cash flow as well as comparable properties to arrive at an anticipated revenue stream. The Notice of Property Value usually contains detailed information as to your property’s description (e.g., square footage, year of construction and number of stories). It also usually discloses the city’s formation of your assessment via the income and expense approach to value. The notice usually itemizes the financial factors considered in calculating your assessment. These factors include gross income, expenses, net operating income, base cap rate and overall cap rate.

The income and expense approach to value is frequently more art than science. By concentrating on your property's cash flow, as well as those of comparable properties, the city Department of Finance estimates the income and expenses attributed to your property. In other words, the city is never limited to assessing and taxing what you in fact collected for any given year. This inequity continues to baffle taxpayers who review their annual notices. Most presume the data should match their RPIE, or tax return, which were filed as legally required. It's difficult to accept taxes in general, let alone when you are paying for imputed income you never received.

As the city assessor is unlikely to suddenly "have your back" in 2020, it is vital to focus on the genesis of your annual assessed value and consult with your certiorari counsel as to the overall importance of an annual protest. If you suspect a statistically long overdue downturn is about to be exacerbated by foolish local pols, do you really want to be the property owner without a protest on March 3rd?

Sure, there have been rare occasions where the city assessor's office made substantial preemptive reductions year-over-year due to exigent circumstances. Examples that come to mind are January of 2002 (following the 9/11 terror attacks) and May of 2013 (following Hurricane Sandy as the city lacked sufficient time to react by January of 2013). Those instances were limited, however, to specific neighborhoods regardless of actual economic impact or property damage. Declining property values and rents, regardless of the cause, are not acts of terror or Mother Nature's wrath. Moreover, the new laws causing market value losses pertain to the entire city. Perhaps you are wondering if the assessor has reduced assessments during bad markets. The answer is no with regard to the periods coming out of the "dot.com" bust or following the 2008 fiscal collapse. In fact, property tax assessments were actually higher in 2009 even though the assessor knew full well that everything had changed.

In the end, the only thing you can rely on from the assessor's office is that they will ascribe as much income and corresponding taxes as possible regardless of obvious current market conditions. As always, that is why it is usually best to file a protest even if only for protective reasons.

Peter Blond, Esq. is a partner at Brandt, Steinberg, Lewis & Blond LLP and the immediate past chair of the NYC Bar committee on condemnation & tax certiorari, New York, N.Y.