



Will the property tax cap really work?

December 12, 2011 - Front Section

The highly publicized tax cap law implemented by the state legislature in 2011 carries a simple headline: "Property taxes capped at 2%!!!" For commercial real estate taxpayers, the reality is not that simple.

In most of the region, the bulk of property taxes are attributable to the school district. After the school district prepares its annual budget, whatever is not covered by other sources of revenue must be raised by the property tax. This is referred to as the tax levy and this is the item which is subject to the 2% cap.

There are several exceptions to the tax cap law, but the most significant is the pension exception. Since New York public workers' pensions are constitutionally guaranteed, no tax cap statute can hinder or prevent this. This exception will rear its ugly head beginning in 2012 when local municipalities will need to raise their tax levies to cover the investment losses from the 2008 stock market meltdown. For example, if a school district needs to raise the tax levy 5% to account for the pension costs, it is empowered to do so.

Most municipalities can actually circumvent the tax cap with relative ease. With the exception of school districts, municipalities can override the cap with a simple majority vote. So whether it is via a county legislature or a town council, the municipality can vote itself the ability to override the cap.

Commercial property owners and tenants should always pay close attention to their tax assessments. In most of the region, there is no cap on the assessment itself, so that can easily cause individual tax bills to rise more than 2%. Take the example of a class B office building which is assessed at \$1 million by the tax assessor. If this building is renovated to become class A space and the assessor raises it to \$1.5 million, it is a safe bet that the taxes will rise by 50% or more. Again, the tax cap offers no relief.

The tax cap legislation is a helpful step in towards mitigating the crushing burden of commercial property taxes, but individual commercial property taxpayers should be reviewing their bill with an attorney to ensure its fairness.

Douglas Atkins, Esq. is an associate at Forchelli, Curto, Deegan, Schwartz, Mineo, Cohn & Terrana, LLP, Uniondale, N.Y.