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Comparing commercial and residential tax grievances: Critical differences exist!

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Critical differences exist between valuing commercial properties as compared to residential properties. We are often asked about the grievance process by commercial property owners who have received numerous mailings from tax companies. Their questions usually center on the process or methodology used in home valuation. These inquiries highlight important distinctions that exist in reviewing a home as opposed to a commercial property.

Small Claims Assessment Review (SCAR) hearings are outlined in N.Y. Real Property Tax Law Â§ 730. The intent of the law is to allow a quick and inexpensive avenue for review. These hearings allow homeowners to petition the court for review of their property assessment before a specially trained hearing officer for a nominal fee of $30.

SCAR hearings are able to occur quickly and typically dozens of cases are decided in one sitting. Part of the reason prompt SCAR hearings are possible is because the review methodology is less complex. While values may be different among various residential properties, the methodology is the same across the board. Hearing officers agree that in the absence of unique circumstances, homes that have not recently been on the market are analyzed by comparing sales of similarly situated properties and making adjustments to account for differences with the subject home.

However, a notable drawback to SCAR hearings is that a petitioner is limited to a maximum assessment reduction of 25%. Accordingly, if a property owner feels his home is over-assessed by more than 25%, he may want to consider an Article 7 proceeding so as not to limit his potential assessment reduction.

In stark contrast, commercial properties are reviewed in Article 7 proceedings. These proceedings involve a number of steps, many of which must be taken before the matter even has proper standing to be heard before the court. In fact, governor Hugh Carey explicitly distinguished residential proceedings from commercial proceedings in his approval memorandum of N.Y. Real Property Tax Law Â§ 730, stating, "Forcing an individual in the position of the petitioner to commence an Article 7 proceeding, with the expenditure of funds for an index number, request for judicial intervention, the cost of a real estate appraisal which satisfies the requirements for tax certiorari proceedings, and the retention of an attorney, is antithetical to what the legislature intended by the enactment of Real Property Tax Law Â§ 730."

Given the variables that make commercial properties unique, the courts have consistently relied upon an income approach as the best indication of market value. The income approach not only examines the actual income and expenses of the subject property, but also compares these figures to market rents and expenses in order to ensure that they do not deviate significantly above or below the market range.

While the actual income and expenses are of great significance to an income approach of commercial property valuation, a number of other variables come into play. These variables include vacancy, collection loss, capitalization rates, as well as factors unique to different types of property. For example, a hotel's furniture, fixtures and equipment would figure into that property's valuation.

These items can vary greatly and require significant negotiations between petitioner and respondent attorneys before a value can be agreed upon. In some circumstances, the property may require an appraisal as well as expert testimony detailing how the different components of the income approach were determined. While this process and methodology may be more time consuming, they can also work to a property owner's benefit. A property's purchase price often builds in a speculative component for appreciation. However, an income approach examines a property as it presently exists with its value derived from actual current data from the property and the market at large.

The mailings received from tax companies may appear to present an expedited system for assessment review, but it is important to remember that a commercial property review requires exacting detail and critical analysis of a number of components. This form of review may take more time, but it is often worth the wait.

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