



An overview of Nassau County's 2016 commercial real estate property tax - by Michael Schroder and Karen Strom

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Owners of commercial property in Nassau County are experiencing a unique confluence of historically high tax increases, litigation challenging large monetary penalties for failure to submit financial statements to the assessor, and the looming impact of a county-wide revaluation to be published in January 2018. Each of these issues seeks to address Nassau County's refund liability and budget shortfalls.

Disputed Assessment Fund: In 2014, the Nassau County Administrative Code was amended to create the Disputed Assessment Fund (DAF) in order to offset the cost of commercial property tax refunds. The law went into effect as of the 2016/17 tax year affecting class 4 commercial properties which filed tax appeals.

Properties that are subject to an assessment challenge have a minimum of 10% of annual tax bills set aside into a county held and controlled segregated fund.

If the property owner obtains a reduction in assessment, the first 10% of that refund will be paid from the fund held for that property. If a case is resolved without a refund, the money put aside for that property is re-distributed pro rata to applicable town, county, and school districts it was "taken" from. In essence, if the property owner loses an appeal, a 10% "reverse refund" is paid back to the entities which levied the taxes in the fund.

While partially designed to discourage the commencement of a tax appeal with a simplistic concept of a 10% penalty for filing, the truth of the matter is that property owners pay the same amount in taxes whether they have filed appeals or not. The shortfall in tax revenue created by DAF has been spread across all class 4 commercial properties with county-wide tax rate increases. Tax increases will cause more owners to file appeals in the coming year. Higher expenses cause values to drop, as the county assessor will soon be hearing from tax certiorari attorneys ad nauseam.

ASIE: In another effort to fill budget gaps, Nassau County has reached a dangerous level of "taxation" by penalty. Nassau County commercial property owners who failed to file financial statements (ASIE statements) with the assessor in 2014 & 2015 are being penalized with the imposition of severe fines that will become tax liens if unpaid. Fines were initially set in 2004 at \$500 per property for failure to file. In an effort to "increase compliance," the county imposed a new version of this program in 2013. The new fines are now up to .75% of the property's full value determined by the Assessor. Failure to pay these fines results in a lien against the property, and subjects owners to potential loss of ownership when the tax lien is sold.

In December, 2016, the county issued an "Amnesty Program" which gave non-compliant commercial

property owners until February 10, 2017 to pay a fine discounted by 25%.

The Amnesty payment was enacted while the constitutionality of the ASIE law and penalties worked its way through the court system. A temporary restraining order against the collection of such fines is in effect as a result of a massive lawsuit.

In perhaps the most abject irony, many property owners who legally filed their ASIE statements received notice of substantial penalties due to inaccurate county record-keeping. Additionally, new owners were fined based on a prior owner's failure to file before sale. The "last straw" is that if a property owner was ready to file electronically on time, they may have had no access to the county's website. This happened to owners in April 2016 when attempting to file on-line. As recently as mid-March the County's portal was again "not open for business." Pressure by various law firms earned an opening once again and a much needed extension to file 2016 ASIE forms to early June 2017.

Re-valuation: The third solution to reducing refund liability is a County-wide revaluation of commercial and residential property. A re-set of property values will be rolled out on January 2, 2018. New assessments will have an impact on taxes as of the first 2019/20 school tax bill issued in October 2019. The commercial real estate industry will experience a period of uncertainty in estimating or representing real estate taxes for at least a year at the end of 2017.

Buyers, sellers, landlords, and potential tenants will need to be cautious until the first round of tax bills are issued with new assessments.

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