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Reducing your property taxes: Timing is everything - by Brad Cronin and Sean Cronin

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Brad Cronin,
Cronin & Cronin Law Firm, PLLC

Sean Cronin,
Cronin & Cronin Law Firm, PLLC

Developers frequently inquire as to why two almost identical buildings in the same area can have significantly different tax burdens. A myriad of variables come into play when analyzing a property, but one aspect that is absolutely critical—and often misunderstood—is timing.

Timing can impact a property tax case in a variety of ways. Advancing a case at the right time can be the difference between a marginal tax reduction or a massive one. Take for instance the difference between negotiating the value of a retail property today as compared to just a few years ago. First, the operations have likely changed at the location and impacted the profit and loss statement. Additionally, the market data utilized in such an analysis, including estimated vacancy allowance as well as the proper capitalization rate, have both increased in recent years. If the case is advanced too early, there will not be an opportunity to incorporate beneficial information.

Proper timing can also prevent locking in taxes at a higher amount. In many New York state jurisdictions, when a property tax case is settled the assessment cannot be challenged for the subsequent three tax years. There are exceptions to the law, mainly a change in occupancy of 25% or greater, but, absent of meeting an exception, the property owner is barred from a further reduction until the fourth year after the settlement. Given the rapidly changing landscape in some market sectors, when a property case is settled can result in drastically different results.

Reduced operating statements and market data are just a couple examples of when timing can influence the tax certiorari case. A number of other timing elements can also work to an owner's advantage or disadvantage each year. One such issue is the equalized market value for assessment purposes. Values are not always as they appear on notices and tax bills. Oftentimes, when a property owner reviews the town's value in preparation of filing a grievance, the value they see is not the one they will actually be protesting. This is because the state-issued assessment ratio is not finalized until after the grievance period ends. This means that you may see a value on your bill that you believe to be acceptable but, in reality, you are challenging a higher value because the assessment ratio is subject to change.

There are a number of ways you can involve your legal counsel regarding the assessment ratio, in fact, they may be in the process of negotiating a new figure or even challenging it entirely. On the other side of the equation, the assessor may be disputing the figure as well. For this reason, there is a great deal of strategy and game theory that must be considered even beyond the operations of a property with each tax certiorari case.

Communication is also key. Your counsel must be aware of any upcoming lease expirations that will impact occupancy. Even if a new tenant is in place, the amount that tenant pays compared to the previous occupant's rent must be considered. The vacating tenant may have been paying an increased rent because of step-ups in their lease while a new tenant may be starting at lower base rent. That new tenant may also be receiving a tenant improvement allowance that will have an impact on the following year's net operating income. In that situation, this new data will not be reflected until that year's financial statements are complete. When the economics are changing from year to year, it is critical for your counsel to have this information in order to make informed decisions and achieve the maximum reduction in your taxes.

Being aware of these changes allows your counsel to incorporate them into the decision-making process. This collaborative effort between property owner and counsel will provide for a greater refund for overpayment in taxes and an acceptable tax burden moving forward. The more information provided, the better prepared your counsel will be to know the optimal timing for your case.

Brad Cronin, Esq., and Sean Cronin, Esq., are partners at Cronin & Cronin Law Firm, PLLC, Mineola, N.Y.