



COVID-19 may provide real estate taxpayers another chance to reduce taxes - by John Terrana and Gabriella Botticelli

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New York property owners who routinely challenge their real estate taxes are probably familiar with the three-year moratorium that applies in many tax certiorari settlements. In all of New York State, excluding Nassau County and New York City, unless the parties have stipulated otherwise, Real Property Tax Law (RPTL) § 727(1) protects property owners by mandating that when a property tax assessment is found to be excessive, the newly negotiated assessment “shall not be changed for such property for the next three succeeding assessment rolls...” Likewise, subsection (3) of § 727

protects the assessing municipalities by prohibiting property owners from filing another petition for the review of their assessment for the next three years, unless an exception applies. This three-year waiting period could prove to be an extreme hardship to properties affected by the COVID-19 pandemic, but we believe there may be a way to get relief.

Over the past few months, COVID-19 has impacted far more than just New Yorkers' health. The ripple effects of the pandemic, and the state's efforts to flatten the curve, have stalled businesses rendering many unable to pay their rent, which will undoubtedly impact New York property values. For this reason, property owners who recently resolved their property tax case and obtained a reasonable property value, may find that value not to be reasonable today. Fortunately, unless a settlement agreement provides otherwise, RPTL § 727(2) may allow property owners who recently resolved their real property tax case to challenge their upcoming property tax assessment and attempt to get it further reduced, despite the mandatory three-year waiting period.

Perhaps most helpful for today's taxpayers is the exception found in § 727(2)(f). According to subsection (f), a property's assessment may be changed where an "action has been taken by any office of the federal, state or local government which caused a discernible change in the general area where the property is located which directly impacts on property values." Due to the health concerns posed by COVID-19, governor Cuomo issued Executive Order No. 202.8, which required all non-essential businesses in New York to reduce their in-person workforce by 100% by 8 p.m. on March 22nd, 2020. Non-essential businesses remained closed to an in-person workforce through April 29th, 2020 pursuant to Executive Order No. 202.14 and closures could be extended even further by a subsequent Executive Order. Long business closures may cause a significant increase in a property's collection losses, which may well impact New York property values. While there is no reported case law on the § 727(2)(f) exception, the Executive Order seems to fall squarely within its purview. If that is correct, a taxpayer who successfully challenged their property tax assessment in the last two years may be permitted to challenge their assessment in the upcoming year seeking a lower assessment, despite the three-year moratorium.

If it is held that the Executive Order does not fall within the purview of § 727(2)(f), a commercial property taxpayer may still be able to obtain relief based on the particular property's vacancy issues. Consider a commercial landlord who owns a retail strip center. Prior to COVID-19, the center may have had few vacancies. However, with closures of all non-essential businesses, many may go under and the center could end up with significant vacancies. Pursuant to subsection (g), a property's assessment may be changed when "[t]here has been a change in the occupancy rate of twenty-five percent or greater[.]" Therefore, commercial landlords who lose at least a quarter of their tenants in the wake of the COVID-19 pandemic may be able to seek a lower property tax assessment based on the increase in vacancy, regardless of when their assessment was last settled.

In these uncertain times, property owners should not have to pay more than their fair share of property taxes simply because they exercised their Constitutional right to challenge their real estate tax assessment and were recently successful in getting it reduced. For the reasons set forth in this article, existing law seems to provide an avenue for relief.

For those whose tax certiorari cases have not been resolved, the uncertainty and unfortunate results created by the COVID-19 pandemic must be taken into account. While it is uncertain whether there will be a drop in market rents, when determining a fair market value of a property for real estate tax purposes, increases in vacancy and collection losses and capitalization rates must be considered.

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