nyrej

Question of the Month: What do valuation dates and COVID-19 have to do with your 2021 property taxes? - by David Wilkes

October 06, 2020 - Owners Developers & Managers

David Wilkes
Herman Katz Cangemi Wilkes & Clyne, LLP

Rental income has diminished for many owners since the onset of COVID-19, especially in New York City, while expenses–primarily property taxes and debt service–have remained steady or even grown. Hardest hit, for all the obvious reasons, have been the lodging, office, and retail sectors. In New York City, early evidence appears to show that multifamily owners (including condos and coops) are also suffering as residents flee to the suburbs. Owners are not only struggling to collect rent and pay the bills now, they also face an uncertain future that, even once social distancing concerns dissipate, will be colored by a permanent shift in how users of real estate regard the need to travel, work, and buy in old school ways.

It’s a challenge to identify bright spots amid the doom and gloom of 2020, but I believe that the coming year may present at least one area in which owners may claw back some of the income they once had in their pockets: Reduced property taxes.

One of the key factors the tax assessor considers when determining value is the jurisdiction’s date of value as well as taxable status. Property must be valued as of a date that precedes the assessment roll, assuming the market conditions of the earlier date.

In New York City, 2020 values were based on a valuation date of January 5th. Absent showing that COVID could have been anticipated as of January 2020, the strongest case for a reduced assessment will be made in 2021.

In much of the rest of New York State, including Suffolk County, the valuation date is roughly an entire year earlier (for the 2020 assessment roll, it would have been July 1st, 2019). Nassau County’s scheme dips even further back in time for a valuation date, and further exacerbates this issue. In Nassau, the January 2nd, 2020, status and valuation date relates to the 2021/22 assessment roll, which is the basis for, at the earliest, the 2021/22 school tax. Here, the position could be taken that COVID is an issue for the January 2nd, 2021 status/valuation – which would mean no COVID related adjustments until 2022/23.

Aside from valuation dates, assessors also must consider “taxable status,” which generally refers to the condition of the property and in many jurisdictions falls squarely within the pandemic period. An argument may be made that “condition” requires consideration of COVID circumstances, and this may require litigation to ultimately be resolved.

While the dates vary, they all have one thing in common: Assessors are relying upon them to deny COVID-based claims in 2020. This may explain why an owner’s 2020 tax assessment remained static or even increased from earlier years. But, argue as they may, the tax assessor will clearly need to take action to reduce owners’ tax values in 2021 and beyond so that they align with reality.

The City of Yonkers will publish its upcoming values on November 1st. In January, New York City and some other municipalities will reveal their opinion of market value for 2021, and other municipalities in New York will follow as we move into May and June. If history is a guide, it is unlikely that the local tax assessor will sympathize with owners’ struggles to survive. Now is the time to gather as much operational and market data as possible from 2020 to prove a case for property tax reduction in 2021 and beyond.

As much as the dire state of the current market for hotel, office, and retail properties may be plain from just reading the newspapers, one challenge tax certiorari lawyers are likely to face is a dearth of hard data to support an argument for a tax reduction. One of the unfortunate hallmarks of a downcycle is that transactions of the hardest-hit properties are almost non-existent. (And this might beg the question, is a “distressed sale” still considered a distressed sale when every other sale is occurring under the same circumstances?) In other words, while it may be obvious to a property owner that there is little demand for their property, in the absence of a consummated sale it becomes difficult to say precisely how much of a discount would be required to achieve a sale. In water cooler conversations, all may agree about the real estate market, but a higher level of proof is required in court.

Valuations of commercial properties for property tax purposes rarely hinges on comparable sales anyway, so focusing on fundamental variables like gross rents, vacancies, collection losses, and tenant concessions will go a long way toward making the case for an assessment reduction even in the absence of sales data. Capitalization rates may be difficult to estimate without many sales, but good appraisers have a variety of tools at their disposal to derive risk in uncertain times.

Some will contend that with plummeting assessed values, millage rates will rise in order to make city and school budgets. This appears to be an unlikely scenario in New York City. Politics always plays a primary role in the degree to which tax rates may rise each year, but more fundamentally the truth is that usually only a minor proportion of owners take action to challenge their assessments. So, even if tax rates rise marginally because of an overall down market, those who file a tax certiorari will be in the best position to reduce their bills.

David Wilkes, FRICS, is a partner at the tax certiorari law firm Herman Katz Cangemi Wilkes & Clyne, LLP, New York, N.Y.