nyrej

2021 – Best opportunity to protest your tax assessment - by Peter Blond

January 19, 2021 - New York City

January is always a busy time of year for a tax certiorari practitioner. The two primary causes for the increased workload: Second half tax bills due in early January and the New York City Department of Finance typically releases the new real estate tax assessment roll on January 15th. But, there is nothing typical about 2021, just as there was nothing typical about 2020. Yet, that simple change from 2020 to 2021 may prove an enormous difference maker for owners of New York City real estate that file a 2021/22 Tax Commission protest.

In New York City, your assessed value and corresponding taxes for the upcoming fiscal year are premised on use, occupancy and condition as of January 5th each calendar year (taxable status date). On January 5th, 2020, COVID wasn't a word in anyone's vocabulary. Accordingly, and legally, the City of New York elected to ignore the real estate industry's pleas for desperately needed assistance and treated all protests as if circumstances were completely normal in calendar 2020 (2020/21 tax year). As ridiculous as it sounds, it should come as no surprise to any New York City landlords, given that they have been chased and chastised by the City Council as well as Albany for years now.

Assessment notices are normally mailed by the Department of Finance in mid- to late-January, but are immediately available on their website once the roll is published. Release of the new assessments will launch the critical 2021/22 real estate tax protest filing period scheduled to close on March 1st, 2021. The new assessments will impact real estate tax bills starting July 1st, 2021.

By law, and in practice, assessors use a property's cash flow as well as comparable properties to arrive at an anticipated revenue stream. The Notice of Property Value usually contains detailed information as to your property's description (e.g., square footage, year of construction and number of units). The notice also discloses the city's computation of your assessment via the income and expense approach to value. The notice usually itemizes the financial factors considered in calculating your assessment. These factors include gross income, expenses, net operating income, base cap rate and overall cap rate.

The city's chosen income and expense approach to value is often more art than science. That will prove truer than ever considering the likely divergence for most properties between 2019 and 2020 performance. Remember, the most meaningful data the city assessor possesses—to promulgate the upcoming roll—is 2019! By focusing on your property's past cash flow, as well as those of comparable properties, the City Department of Finance estimates the income and expenses ascribed to your property. In other words, the city is never limited to assessing and taxing what you in fact collected for any given year. This inequity has baffled taxpayers for years as many presume the data should match their legally required RPIE. It's difficult to accept taxes during the best of times, let alone when you are receiving far less rent and may be facing lengthy vacancies.

Struggling landlords citywide are probably anticipating reduced assessments and tax bills in July, but real estate taxes are rarely such a straight forward treat. Sure, there have been rare occasions where the assessor's office made significant proactive reductions due to exigent circumstances (e.g., following the 9/11 terror attacks and Hurricane Sandy). Most examples, however, were limited to specific neighborhoods regardless of actual economic impact or damage.

This time it isn't one or two neighborhoods, or a particular class of property, such as retail. COVID and governmental efforts to stop the spread have resulted in unprecedented economic damage. Reports indicate rents are down 30-50% depending on property type. Let's assume 30% is the correct figure and New York City's annual real estate taxes total roughly $30 billion. If the city preemptively slashed $9 billion off its operating budget for the 2021/22 fiscal year, it would be facing quite a shortfall. With that in mind, 2021 could be the proverbial immovable object against the irresistible force. Will the city assessor and/or City Tax Commission take the appropriate remedial actions when provided incontrovertible evidence as to the new reality at a particular property?

New assessed values may be down for some property classes, such as hotels and theatres considering the obvious anticipated decline in 2020 revenues from 2019, but likely few others. In the end, the only thing you can always rely on is the assessor's office imputing as much income and corresponding taxes as possible regardless of the obvious COVID conditions. Thus, your 2021/22 NYC real estate tax assessments must be protested without hesitation.

Peter Blond, Esq. is a partner at Brandt, Steinberg, Lewis & Blond LLP and the immediate past chair of the NYC Bar committee on condemnation & tax certiorari, New York, N.Y.