



## **A look at the unmatched complexity of New York's property tax system - by David Wilkes and Kevin Clyne**

September 21, 2021 - Design / Build

David Wilkes

Kevin Clyne

Reminiscent of Julius Caesar's famous phrase referring to Gaul being divided into three parts, when it comes to property taxes, one might say that all New York is divided into three very distinct and different approaches to assessing real estate for taxes and challenging those assessments: New York City, Nassau County, and everywhere else (Suffolk and what is generally referred to as "Upstate").

Even that may be an oversimplification. We are often asked, how do property taxes work in New York? After more than two decades of practicing almost exclusively in this field, our response remains: There is no one system that can properly be called “New York.” This is a fairly unique dynamic in the assessment world compared to the rest of the United States. Every town, village, and city in New York State has its own nuances and peculiarities that can impact an owner’s success in minimizing taxes. For property owners with portfolios that span an inter-county geography in the state, keeping track of all the differences is daunting.

Our law firm is among the very few in which senior-level counsel are based in, and bring substantial experience with, each of the three principal property tax systems, and our staff and attorneys continually share and cross-reference developments in each. This often solves the problem encountered by owners who are accustomed to bouncing from one property tax firm to another depending on the location of a particular building.

There are more differences than similarities in process and rules as one moves around the state: For instance, commercial property (such as hotels, offices, retail) in New York City is valued as of January 5 each year at an equalization ratio of 45% on a class-based system (differentiating among different types of properties). Valuation dates throughout the rest of the state fall at a variety of other times during the year – sometimes preceding the assessment year entirely – depending on where the property is located (different valuation dates may even apply to the same property if it is located in a village that assesses separately from a town!); and in each of these jurisdictions the equalization ratio will likely differ and change from one year to the next, even within the same county, and nearly all jurisdictions in New York state outside the city and Nassau make no property class distinctions.

Rather than attempt to catalogue in limited space the endless differences, the balance of this article focuses broadly on what is probably the most critical: The distinction in how an initial effort at review (called “Administrative Review”) is handled.

In Nassau County, there is a substantive review process. The Assessment Review Commission (ARC) holds literally hundreds of hearings each year on commercial properties. Experienced valuation experts employed by the county handle these hearings and adjustments are made. Sometimes these adjustments are significant enough to finally resolve the case. However, the calendar of cases heard is set by the county with very few exceptions. As such, court involvement is required on a tremendous volume of cases.

In New York City, the administrative review process is even more vibrant. The vast majority of cases in the five boroughs are resolved at the New York City Tax Commission. However, the court level process for cases not resolved at the tax commission is cumbersome, problematic, and time-consuming.

Virtually everywhere else in the state, the administrative review of assessments is largely non-existent. Rather, for a commercial property, it tends to be a procedural hurdle that can be expected to yield nothing beyond the exchange of forms and documents that end up tucked away in

a municipal filing cabinet. There are few, if any, “hearings,” and the assessor’s determination is left untouched. Administrative review is principally used by municipalities to throw up technical hurdles in an attempt at minimizing the cases that actually receive a substantive hearing and find any number of creative ways to dismiss a case so that it is never heard on the merits.

The result is that outside of New York City and Nassau, property tax appeals inevitably end up in lengthy court proceedings that accumulate several years, at a minimum, before they are adequately resolved. During this time the owner must continue to pay taxes at the over-assessed level or face near-usurious interest and penalties (often as much as 18%).

While each system in New York state presents its own hurdles and challenges, the overall complexity of managing multiple processes statewide simply to achieve a fair and equitable property tax is unmatched anywhere else in the nation and requires high-level expertise, data management, good working relationships with municipalities and the courts, and great depth of experience in the field.

David Wilkes, CRE, FRICS, and Kevin Clyne, CRE, are partners in the tax certiorari law firm of Herman Katz Cangemi Wilkes & Clyne, LLP, with offices in Westchester, Manhattan and Long Island.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540