What will my real estate taxes be after the Tax Equity Now NY lawsuit is concluded? - by Peter Blond

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The most popular question this spring from every type of property owner is “what will my real estate taxes be after this big lawsuit?!” While suddenly in the news again the TENNY (Tax Equity Now NY) lawsuit commenced so very long ago, a possible conclusion potentially still lies so very far away. The recent decision by the New York Court of Appeals, albeit packed with electric dicta, was merely a board game version of return to start. The favorable verdict for TENNY merely permits the original lawsuit to proceed at the lower court level. In other words, while the decision is a hypothetical ‘ladder’ for petitioners, it is more ‘chute’ for New York City as the original ‘winner’ at the trial level. Any large municipality wishes to avoid a massive reassessment that typically takes years to complete and could cost many hundreds of millions for outside valuation firms. Additionally, the age-old political rule applies as to how many votes may be gained or lost from acting.

As inaction is always easier in net zero scenarios, most municipalities avoid the quagmire and kick the proverbial can down the road for the next administration. However, this time New York City is facing the top court in the State having characterized their system as causing an undue harm with perpetual impact to predominantly minority communities, including renters. In fact, New York City offered no resistance to combat the statistical evidence presented as to adverse impact. Critically, in their conclusion, the court of appeals appeared to goad the New York City Council accordingly when stating “while these officials bemoan the situation, the City fails to act.”

Many years ago, when Nassau County faced an equivalent legal challenge to their statutorily resultant assessment disparities, it led to multiple revaluations just to attempt to rebalance the assessment playing field. With the TENNY court of appeals dicta in mind, it is entirely possible the city council will finally tackle this unwanted revaluation goliath head-on even if only to avoid further damage to the constituents they would necessarily leave in harm’s way. In the end, while the court in Nassau’s case would have likely ordered a revaluation, the matter was settled to expedite the inevitable.

With an eventual settlement as a possibility in TENNY, property owners do have some cause for mid-term concern. The difficulty in getting out ahead of this seeming eventuality is we do not have any definitive valuation approach with which to judge the future overall picture. In addition to the uncertainty surrounding valuation changes we also do not know whether Albany will maintain the same statutory landmines that create and exacerbate these valuation discrepancies and inequities over long periods of time. As an example, state law dictates that tax class 1 properties (primarily one, two and three family houses) may only receive maximum annual assessment increases of 6%, or 20% over a five-year period (barring new construction/alteration work). If that provision remains in effect, as it has in Nassau, the inequities eventually reoccur even if new neighborhoods serve as blight versus gentrified examples.

With this said, there are still only the three main valuation approaches with which to rely for assessment purposes; income and expense, sales and the rarely utilized cost approach. Historically,

New York City has only utilized sales with respect to tax class 1 properties as described above. Rental properties as well as cooperatives and condominiums have been valued based on an income and expense approach to value pursuant to law. Despite the growing trend of rentals in the tax class 1 marketplace, it remains likely that valuation will continue to be based on sales for class 1. As a portion of the TENNY suit necessarily involves the discrepancy in treatment between cooperative and condominium apartments as compared to their class 1 counterparts, it would perhaps be easier to employ sales as a more transparent indicator of whether the valuations applied are equitable in each instance. Nonetheless, in many valuation assignments an appraiser may employ more than one approach to value with a reconciliation provided.

As many tax class 1 and tax class 2 properties have benefitted from legally mandated assessment increase limits for extended periods, these owners could be facing large real estate tax liabilities in the years immediately following a revaluation of this type. If New York City does determine full market value as an appropriate assessment moving forward, it could also use that more transparent method for commercial properties as well. While it is early in the next TENNY hand to be played, seeking the advice of counsel with revaluation experience is prudent if concerned about the impact to your property.

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