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Property values down: Your real property taxes should follow

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If you asked a landlord to take their 2009 rent roll and mark in red pen any changes in tenancy or rent paid as compared to 2007, many of them might run out of ink before they finish marking the page.

The days of strong lease growth and sustained rent increases are on a prolonged hiatus. Red ink not only covers the 2009 rent roll as compared to years prior, but changes continue to occur on an increasingly frequent basis. The rising expenses and depleted income stream associated with rent reductions, defaults and vacancies are never a good thing, but if they must occur, property owners are wise to take advantage of the real property tax benefits they can provide.

The assessor's job is to take a "snapshot" of a property on taxable status day, then evaluate it based on that year's valuation date as dictated by the Real Property Tax Law. The assessor does this by analyzing the income stream at the property, comparable sales and, on rare occasion, construction costs.

The ongoing dearth of commercial real estate transactions has left appraisers and assessors alike scrambling to obtain reliable data from which to value properties. Even an actual sale of a property must factor in the rollercoaster ride the commercial market has endured since the property was acquired. Therefore, the income approach continues to be the preferred method by the courts in New York State.

In the current market, income streams are ever changing. The formerly reliable ebb and flow of consistent data points has been replaced by a field covered with a variety of land mines. Ironically, these disturbances can assist the property owner's tax case in a positive manner.

Rent Abatements: Owners have been pressured to accommodate tenants by reducing rents. When given a choice between lessening their revenue or jeopardizing the tenancy entirely, many landlords have opted to agree on a compromised rental figure.

Your property tax counsel may incorporate this figure into their negotiations as representation of market value at the property. Under the law not only should that tenant's space be valued at that figure, but the market rent should be adjusted for size and location and applied to an analysis of the entire property. Thus, a 20% rent reduction can be used by your counsel to argue that the total income should be valued as if rents were reduced to this level.

Arrears and Defaults: Landlords experiencing late payments and defaults are in a precarious position. Most commercial owners possess enough sophistication to work with a tenant should they deem that the tenant's plan to remedy the situation is realistic and sincere. Of course, owners are not amenable to such arrangements out of charitable impulses, rather, the costs and resulting vacancies associated with the alternatives are even less appealing options.

In today's market where cash is king, the present worth of money holds a large value. A steady income stream turned into a sputtering valve rife with uncertainties disrupts everything from mortgage payments to basic liquidity. The law allows your property tax counsel to deduct money lost and expenses associated with such situations, as well as factoring in the additional risk at the property. Combining these factors could produce a potential windfall in tax reduction for that valuation date.

Vacancies & Accommodations to fill them: The courts allows for a market vacancy factor to be deducted when arriving at fair market value. Should a property contain actual vacancies that exceed the market average, this should be calculated into the property tax analysis.

Just as importantly, today's tenants are asking for incredible accommodations to fill current vacancies. Therefore, when a $20 per s/f lease is agreed upon, but the landlord must first perform an expensive build-out, that build-out must be factored into the true market value. Tenants have come to expect certain advantages in this market and these must be conveyed to the assessor as the numbers alone do not tell the whole story.

A volatile market causes unrest and instability, but these factors help your property tax case. By working closely with your counsel, you will put yourself in position to let negative market factors positively impact your property taxes.

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