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THE FINANCIAL SERVICES AND REAL ESTATE WEEKLY FOR MASSACHUSETTS

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How COVID-19 is Affecting Property Tax Appeals

Pandemic Prompts Disputes over Commercial Assessments

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SPECIAL TO BANKER & TRADESMAN



As many property owners, landlords and tenants have experienced over the past 19 months, the COVID-19 pandemic has had a tremendous impact on the economy

and the commercial real estate market in Massachusetts.

While the life science industry has prospered, most other areas have suffered mightily, as evidenced by the drastic effects on the retail and hospitality markets. As a result, it is likely that we will see decreased property values across the board. Because local property taxation is driven by the market value of real estate, it is expected that an unprecedented number of property tax appeals will be filed for fiscal year 2022.

Before COVID-19 reached the U.S, the national and local economies were thriving, and strong demand and growth continued into early 2020. However, all of that changed in March when pandemic stay-at-home orders went into effect and companies were forced to implement remote working plans. Office buildings went vacant. Travel and tourism ground to a halt, devastating the restaurant, retail and hotel industries and drastically changing the landscape of the commercial real estate market. When valuing commercial properties for tax assessment purposes, local assessors cannot ignore the adverse economic consequences of the pandemic.



COVID-19's effects on income-producing properties will pose challenges for officials responsible for setting property tax assessments.

Local assessors are required to determine the "fair cash valuation," or fair market value, of real estate as of Jan. 1 of each year. The value determined by the assessor dictates the property tax assessment for the following fiscal year. Municipal fiscal years run from July 1 to June 30.

Calculating a Property's Value

There are three generally accepted methods for valuing property: cost, sales and income. The weight given to any single method depends on the type of property being valued.

The sales method works well with residential properties, while cost is the preferred

method for special use or utility properties. The capitalization of income method is generally used for income-producing properties. Actual income and expense numbers are strong evidence of the earning capacity of the property, but other factors, such as general market conditions, come into play.

To determine fair market value as of the Jan. 1 value date, each spring assessors send commercial property owners a written request for information regarding the financial performance of the property for the previous calendar year. For fiscal year 2022, Jan. 1, 2021 was the effective date for tax

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assessment valuation purposes, so assessors requested information for calendar year 2020. Often, the information provided would not have painted a rosy picture for the individual property or the general market conditions.

Contrast that with fiscal year 2021, where the effective valuation date was Jan. 1, 2020 and the assessments were based on 2019 performance. The economy was still strong on Jan. 1, 2020, and the pandemic was not a relevant consideration in any challenge to fiscal year 2021 valuations and assessments. Fiscal year 2022, however, paints a different picture, and the adverse economic consequences of the pandemic should be reflected to a certain degree in the fiscal 2022 tax assessments.

Miss a Deadline, Lose Your Case

For owners who believe that their property is over-assessed, the only remedy is the statutory abatement procedure. Tax appeals are commenced by filing an application for

abatement with the local board of assessors. If there is no resolution at the local level, the next step is an appeal to the Appellate Tax Board, where an owner can either settle the appeal or have a full trial on the merits.

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It cannot be overstated that owners must be keenly aware of the deadlines associated with filing abatement applications and appeals with the Appellate Tax Board. One missed deadline in the process and the appeal is over.

It remains to be seen how assessors and

the Appellate Tax Board will respond to property owner claims of overvaluation. State and local governments are in a tough spot. Many communities rely on revenue from property tax and will be reluctant to make concessions because of the pandemic, possibly characterizing it as an anomaly not truly reflecting a property's value.

The question of the pandemic's impact will likely end up before the Appellate Tax Board, and there is no direct precedent for the board to rely upon. Experts will offer conflicting opinions on the pandemic's impact on the real estate market. The economic downturn in 2008 had a negative impact on property values, but it did not result in a widespread and sustained business shutdown. This is uncharted territory. How the Appellate Tax Board addresses the impact of COVID-19 on property value will not only affect current year appeals, but also real estate valuation and assessment for the next several years. ◀

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