

Commercial Property Tax Appeals in New Jersey

Taxpayers should carefully consider whether to file a tax appeal in New Jersey because an assessment can also be increased as a result of an appeal.



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NEW JERSEY HAS THE HIGHEST COMMERCIAL property taxes in the country and a property tax appeal process that puts owners at risk of paying significantly more if the decision doesn't go their way. Here are five issues to address when considering a commercial property tax appeal.

The deadline to file appeals expires before annual taxes are set. Tax appeals must be filed by April 1st in all municipalities, except in those municipalities that underwent a municipal-wide revaluation, where the deadline is May 1st. These deadlines are strict, and failure to file a timely appeal completely bars a taxpayer from obtaining property tax relief. Unfortunately, because budgets and tax rates are not generally finalized until August or later, these deadlines pass before New Jersey taxpayers are informed of their actual property tax burden for that year. For example, in 2012, tax appeals have to be filed by April 1st (or May 1st), yet most taxpayers cannot learn of their actual tax burden until August 2012, at the earliest. As a result, my office receives phone calls every August, September or October, from taxpayers who wish to contest an increase in their taxes, months following the deadline to file their appeals.

Assessments are frequently not as they appear. Each January, New Jersey property owners receive postcards advising them of their assessments for that year. The notices include the previous year's assessment, the new assessment, and the total taxes paid in the previous year. However, the notices do not provide the one piece of information essential to understand the assessment, namely, the implied value of the property for tax purposes, or the property's equalized value. New Jersey does not require municipalities to annually assess property at 100 percent of market value. As a result, most New

Jersey municipalities only assess at a fraction of market value. This fraction is known as the "Average Ratio." Failure to recognize and to know the applicable Average Ratio can result in property owners paying more taxes than they should.

You can lose your right to appeal before you start. A New Jersey law, commonly referred to as Chapter 91, authorizes assessors to serve annual requests for income and expense information upon properties that are "income producing." Chapter 91 bars courts from hearing appeals from taxpayers who fail to file timely responses or who file false or fraudulent responses. Chapter 91 has been the subject of extensive litigation in the New Jersey Tax Court, the Appellate Division, and was the issue in two cases recently decided by the New Jersey Supreme Court. The Courts have strictly construed Chapter 91 against the taxpayers, and those who do not respond appropriately needlessly risk losing the right to appeal their assessments.

Unfortunately, even taxpayers who wish to respond appropriately to these requests may still lose their rights of appeal. Many taxpayers will run afoul of the seemingly simple question of whether their property is "income producing," particularly those who believe their property is "owner occupied." For tax and liability purposes, the title to commercial property is frequently held in the name of some form of corporate entity. Even if that entity is wholly owned by the business that occupies the property, the property will likely be deemed "income producing" for Chapter 91 purposes. Although, Chapter 91 law is still evolving, one thing remains certain—taxpayers who ignore Chapter 91 requests, or who fail to respond appropriately, will most likely lose their right to appeal their taxes.

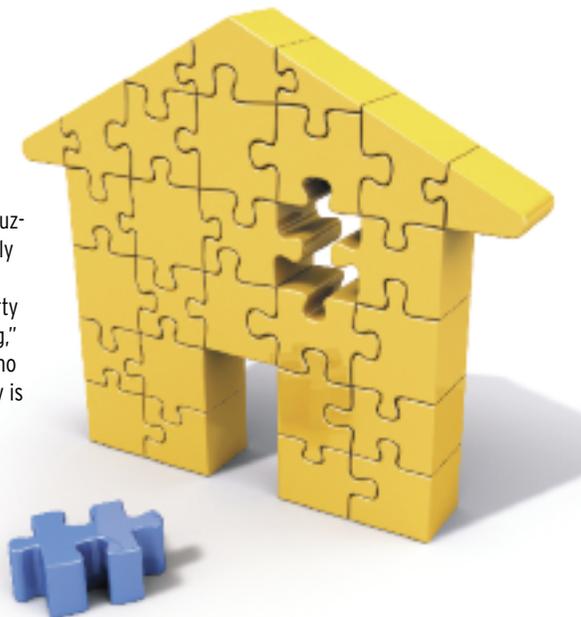
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Some tenants can appeal their property taxes. Many tenants are responsible for paying the property taxes on the properties that they lease. New Jersey law allows many of these tenants, particularly those paying 100 percent of the taxes, to file property tax appeals. Landlords and net tenants may have divergent interests and motivations when it comes to appealing property tax assessments. Tenants who pay the taxes are well advised to assert their rights to file appeals and to ensure that they are not needlessly paying too much in property tax.

Appeal at your peril. Taxpayers should carefully consider whether to file a tax appeal in New Jersey. Unlike other jurisdictions, in New Jersey, it is possible for an assessment to be increased as a result of an appeal. Although this has never happened to one of our clients, it does happen, and is a possibility which must be weighed when

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examining whether to appeal. Also, because Tax Court value does not likely reflect true world value, even the most sophisticated taxpayers should consult with an attorney before deciding whether to file an appeal.

This article is intended to provide a general introduction into important property tax issues. There are exceptions and further complications in each of the areas. Taxpayers should discuss their particular situations with an attorney who concentrates his/her practice on representing taxpayers in property tax appeals. Fortunately, most attorneys who practice in this area work on a contingency fee basis, meaning that there is no charge for such consultations or for their legal services, unless they obtain a tax savings. ■

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Bonus Depreciation vs. IRS Section 179



The amount of Section 179 expensed is limited to taxable income.



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Under the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, properties placed in service in 2012 are allowed 50 percent bonus depreciation.

Leasehold improvements made to non-residential property are also eligible for bonus depreciation as long as the improvements are subject to a lease with non-related parties and the building is at least three years old. Qualified leasehold improvements to retail property are also eligible for bonus depreciation. The interiors must be open to the public and used in the retail trade. Qualified leasehold improvements to restaurant property are eligible for bonus depreciation if more than 50 percent of the building is used for the preparation and consumption of food. An alternative to bonus depreciation is Internal Revenue Code Section 179, which allows expensing \$125,000 to real property as of Jan. 1, 2012 through Dec. 31, 2012. After Jan. 1, 2013, the amount will be reduced to \$25,000. The assets purchased do not have to be new; however, there is a limit on the total assets purchased in each year. To reduce the amount of Section 179 expensing in 2012 and thereafter, the qualified asset purchase limit is \$125,000 plus a cost-of-living adjustment. The amount of Section 179 expensed is also limited to taxable income. Section 179 expensing cannot create a loss. Qualified assets are depreciable, tangible personal property purchased for use in the active conduct of a trade or business; off-the-shelf computer software; qualified leasehold improvements; qualified retail property; or qualified restaurant property. If there is an early disposal of the asset expensed under Section 179, the deduction must be recaptured; there is no recapture of bonus depreciation. Bonus depreciation is not adjusted for the Alternative Minimum Tax; and the bonus depreciation election must be made for all property in the same class. Certain states allow only \$25,000 for Section 179 deductions and no bonus depreciation. ■

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