

Defend The District's Budget: Participation In Tax Assessment Cases Saves Money

Given the state of our economy, commercial property owners are more and more likely to scrutinize where each dollar is spent. And it has not gone unnoticed by corporate America that already high property tax expenses are on the rise. Thus, paying an attorney to challenge a real property tax assessment suddenly doesn't seem like such a bad investment. The informal nature of administrative proceedings, coupled with the minimal pleading requirements for Supreme Court actions, has led to an influx of challenges that take years to resolve. Many challenges are filed even if they have no merit. This poses a significant problem for School Districts, since every tax assessment challenge negatively impacts the District's finances. With every action, millions of dollars in District revenue could be at risk. If the District isn't involved in these proceedings, it doesn't have any control over the matters.

The problem isn't only the "system" since even with the quick fix property tax cap for instance, properties will still be over-valued, real property tax challenges will still be filed and taxes will still go up. Instead, the problem is complex and arises from a number of factors, including that many assessors are underpaid and offices are understaffed; municipal resources are scarce; exemption administration is nearly impossible; taxes are paid prospectively while assessment challenges are remedial in nature with resolution often not had for years after the fact; State support systems are unfunded and under-manned; and State officials often provide incorrect or misleading information to taxpayers about our real property tax system.

Unlike so many other states (and even New York City), our Upstate New York school districts are funded mainly via real property tax levies. For this reason, Districts rely heavily on assessors to properly value properties. The District sets its budget using the municipality's assessed values for each property within the District, whether those values are correct or incorrect. Of course, when a property is over-assessed, the property owner can and should file an action to correct the error. And while administrative remedies (grievances) give rise to the possibility that errors can be corrected prior to setting the District's budget, many municipalities complain that they do not have the staff, funding, or tools to administratively resolve grievance complaints. Therefore, when property owners are unable to obtain administrative relief, they sue based upon the unabated final roll values that the District also uses to set its budget. To be made whole, however, an aggrieved property owner must seek refunds for each year challenged upon resolution of the case.

Only assessing municipalities are in a position to act proactively to rectify any valuation deficiencies before budgets are set and taxes are levied. The health of your District's budget depends, in large part, on proper values being set by the assessor in the first instance, or as remedied at the grievance stage generally in May of each year. After the levy, it is not the municipality that has the most refunds at stake if there is an error; it is the District that stands to lose the most by way of refunds if an assessment (or value) is determined to be excessive.

Unlike the assessing unit, which is automatically made a party to these suits, a District must take affirmative steps to intervene in each tax assessment litigation case commenced each tax year, which can be done relatively inexpensively. Unless it intervenes, a District has no say in assessment cases. Defending a tax assessment challenge is complex and requires a specific knowledge of the law and expertise in property valuation methodologies. Moreover, a District cannot assume that the assessor or the municipal attorney is looking out for the District in a pending tax assessment case – it must be vigilant and guard its own interest. For instance, in a case decided in December of 2010 (see *Board of Managers v. Town of Ossining*, 79 A.D.3d. 1032 [2nd Dep't 2010]), the School District successfully argued that

Petitioner's defective service on it warranted dismissal of six (6) pending proceedings spanning years 2002 - 2007. Without the District's diligence, this case could have gone to trial and resulted in refund payments from the District for the six (6) years of litigation, plus interest!

The unfortunate reality is that some municipal attorneys put tax assessment cases on the back burner, allowing multiple years of litigation to accrue. The result of this practice is usually higher expert fees and outrageous refund and interest payments. Further, some avoid court because they do not understand the unique issues real property tax challenges present. The results can be settlements that have no basis in the actual value of the property.

Even if the municipal attorney does try to act in the District's best interests, at some point, the District's interests may not always be aligned with those of the municipality. For instance, a settlement may be suggested that waives municipal refunds, but not District refunds. Unless the District is involved in the proceeding and at the negotiating table, the municipality must accept that settlement without consulting the District.

To review, taking an active role in tax assessment review proceedings allows the District to defend its position based on its own needs and know at every stage the full extent of its potential liability. Intervening in the proceedings:

- (1) Establishes a collaborative environment and working relationship between the District, the assessor, and municipal attorney;
- (2) Protects the District and its revenue by analyzing settlement offers to determine if settlement seems appropriate or preferable to trial, with only the District's best interests in mind;
- (3) Gives the District access to property records, case files and records, analyses and status reports including thorough evaluations of each matter individually in a timely manner;
- (4) Opens the door for sharing necessary resources and expenses, including expert fees;
- (5) Eradicates reliance upon municipal attorneys who are not ethically obligated to act in the District's best interests; and
- (6) Gives the District a voice in all aspects of this process.

In the area of PILOT agreements, too, the municipality's and District's interests may not always be aligned. Districts are afforded valuable rights when property owners and the local industrial development agencies are negotiating PILOT agreements. Our District clients are routinely asked to reduce their applicable percentage of revenues. Insisting that District attorneys be present at the negotiating table can secure your District's revenue.

Bond, Schoeneck & King, PLLC has a practice group dedicated to property valuation issues. This group has worked with numerous School Districts across New York State with great success. This practice group knows the special needs of School Districts in property valuation/assessment review cases. We routinely aid assessors in resolving cases prior to litigation, offer annual audit/maximum risk calculations for each case, and provide thorough analyses and guidance regarding all settlement negotiations. We also offer full litigation services, and annual PILOT program impact analyses. Recent successes have resulted in eliminating millions from reserve funds. For more information on what you can do to protect the District's budget, please contact any member of our Tax Assessment, Condemnation and Property Valuation Practice Group:

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