

Publications

Time is Running Out to File Appeals Across the Country

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Taxpayers seeking to contest real property tax values established by assessing jurisdictions across the country often have a short window of opportunity to contest their new valuation. This time frame varies by state and by local jurisdiction, and in many cases begins to run upon the mailing of a new value notice. Below is a list of states/jurisdictions with upcoming appeal deadlines: **State or Jurisdiction Deadline**

Massachusetts December 1, 2018 through March 31, 2019; appeal from tax bill West Virginia January 1, 2019 to January 31, 2019 Hawaii Honolulu deadline in January, other counties April 1, 2019 New York January deadlines in: Amsterdam, Lackawanna, Syracuse & White Plains, village deadline in mid-February; other jurisdictions vary Nevada January 15, 2019 Alaska Late January through mid February; 30 days from valuation notice Canada British Columbia January 31, 2019; Ontario March 31, 2019 other provinces vary New Mexico February 1, 2019 to March 31, 2019; 30 days from notice date South Carolina February 1, 2019 to March 31, 2019; 30 days from notice date Virginia Varies by jurisdiction, generally January – April 1, 2019 for Assessor reviews Maryland 45 days after notice for properties that were re-assessed; value notices typically are mailed in late December Connecticut February 20, 2019 or March 20, 2019 Alabama March-May; 10 days from notice date Arizona March-May; 60 days from notice date Arkansas Starting in March; 30-45 days from notice date Delaware March 15, 2019-April 15, 2019 varies by jurisdiction; 20 days from notice date Michigan Varies by township for local boards, generally near March 15, 2019; May 31, 2019 for Michigan Tax Tribunal Oklahoma March 15, 2019-April 15, 2019 varies by jurisdiction; 20 days from notice date South Dakota March 15, 2019 District of Columbia April 1, 2019 Kansas April 1, 2019 Maine April 1, 2019 Nebraska April 1, 2019 through April 30, 2019; varies by jurisdiction; 30 days from notice date New Jersey Generally, April 1, 2019 or within 45 days from notice date, some counties may be earlier North Carolina April 1, 2019 Ohio April 1, 2019 Pennsylvania Allegheny County (Pittsburgh) April 1, 2019; other counties are in summer/fall

Property taxes are frequently the largest non-productive expense incurred by property owners, and proactive management of this expense may result in increased profitability. Now is the time to review your tax assessments to make sure that each property is valued appropriately and that you are paying your fair share, and only your fair share, of the property tax burden.

Vorys has significant experience in analyzing real property tax values and securing real property tax savings for taxpayers across the country. To discuss an analysis of the opinions of value assigned by your local assessing jurisdiction, please contact us to discuss further.

****The chart is for informational purposes only and does not constitute legal advice. In some cases appeal dates vary by jurisdiction and notice date. To discuss the appeal deadline for a specific property contact Vorys.***

Multistate Review of Property Tax Developments and Decisions

Since the last edition of *The Evaluator*, there have been several notable legislative developments and decisions from courts and tax boards in jurisdictions across the country. Learn more about these important matters here.

Apple and Google Contest Large Property Tax Assessments at Home In Santa Clara County, Ca

Apple, Google, and other large corporations are fighting property tax assessments in their home turf of Santa Clara County, CA.

Apple had over 450 outstanding property tax appeals pending before the Santa Clara Assessment Appeals Board that date all the way back to 2004 with over \$8 billion of tax valuation in dispute. The appeals involve various properties owned by Apple, which was the largest property taxpayer in Santa Clara County for the 2017-18 tax year. One of those properties is Apple's corporate campus in Cupertino which the County has valued at over \$1 billion for tax valuation purposes. However, in its appeal of the County's assessment for the 2015-16 tax year, Apple contended that the property was worth a mere \$200 for tax valuation purposes.

Meanwhile, Google is also fighting their tax assessments in Santa Clara County through appeals pending before the Santa Clara County Assessment Appeals Board. Google has filed over 130 assessment appeals with over \$2.8 billion in dispute. In its appeal of the County's 2017-18 tax year assessment for its famed Googleplex property in Mountain View, which is assessed at nearly \$62 million by the Assessor, the company stated that the property was worth \$0 for tax valuation purposes.

California Doubles Real Property Tax Exemption for Low-Income Housing

Senate Bill No. 1115

Starting January 1, 2019, the total annual low-income housing real property tax exemption cap in California is increased from \$10 million to \$20 million in assessed value for a taxpayer with respect to a single property or multiple properties. Also, any outstanding qualified real property tax in excess of the \$10 million cap which was levied or imposed on or after January 1, 2017 and before January 1, 2019 may be cancelled to

the extent that the amount canceled does not result in a total assessed value exemption amount in excess of the \$20 million annual cap.

Kansas Board of Tax Appeals Issues Order to Reduce Valuation of a Bank Branch

In the Matter of the Equalization Appeal of Capitol Federal Savings Bank for the Year 2016 in Johnson County, Kansas, Docket No. 2016-6796-EQ (Sept. 12, 2018).

A recent decision by the Kansas Board of Tax Appeals (Board) addressed the appropriate method to account for the extra rent premium a branch bank demands over other retail rental rates. For purposes of assessing the fee simple value of the subject property under Kansas law, the Board discussed that branch banks may have extra features and/or higher quality finishes that require adjustments. The County argued that the subject property should be valued using a rental rate of \$20 per square foot plus a \$6 per square foot rent premium. The taxpayer contended that the rental rate of \$17 per square foot was appropriate plus an adjustment of \$140,700 for bank extra features. The Board ultimately determined that the subject bank was overvalued and noted that the extra features should be itemized for each property and valued using a cost approach. Using a cost approach, as opposed to a per square foot allocation, ensures that the valuation is both accurate and “equitable among like properties.”

Massachusetts Tax Board Grants Exemption for Public Airport Property

Swissport Fueling, Inc. v. Bd. of Assessors of the City of Worcester, Mass. ATB Docket No. F321360, August 10, 2018.

The Massachusetts Tax Board granted a tax abatement for public airport property originally denied by the Board of Assessors of the City of Worcester. The property at issue in the appeal is part of a public airport leased from a public instrumentality and used to provide services deemed “essential to the operation of the airport and necessary to its public purpose” and “available to the use of the general public.” Accordingly, the Board found that the subject property should be exempt from taxation, consistent with the taxation of public land leased for commercial purposes as set forth in Mass. Gen. L. § 2B.

Michigan Tax Tribunal Sustains Tax Valuation for Retail Property

Greenfield – 8 Mile Plaza v. City of Southfield, MAHS Docket No. 17-001491

The Michigan Tax Tribunal (MTT) rejected a taxpayer’s challenge to the 2017 tax year assessment giving little weight to the taxpayer’s appraisal based on the defects in the appraiser’s highest and best use analysis. The subject property, a former Home Depot, is currently utilized as a single tenant building for a wholesaler that sells products to dollar stores. The subject property is comprised of warehouse space, office space, and limited retail space. The taxpayer’s appraiser argued that the highest and best use of the property was industrial because the subject property was primarily used as a warehouse. On that theory, the appraiser utilized three industrial properties and two shopping centers with multiple inline spaces in his sales comparison approach.

In finding that the taxpayer's appraiser's highest and best use analysis was "inaccurate," the MTT noted that the subject property was not zoned for industrial use and could not be utilized as industrial even as a special use. The MTT also criticized the appraiser's use of multi-tenant shopping centers as comparables as they were not truly comparable to the subject property, which is a single-tenant, owner-occupied property that was formerly used by a big-box retailer. The MTT also rejected the appraiser's use of an income approach because the property had always been owner-occupied. In adopting the County's appraisal, the MTT agreed that the utilization of "second generation" big-box comparable sales was most appropriate.

Minnesota Tax Court Dismisses Four Big Box Petitions for Failure to Timely Disclose Income and Expense Information

***Wal-Mart Stores East LP et al. v. County of Anoka*, No. 02-CV-17-2047 et al., (Minn. T.C. September 7, 2018)**

The Minnesota Tax Court dismissed petitions by a retailer for failure to disclose certain financial information, which is statutorily required under Minnesota Statute § 278.05. In these cases, Walmart challenged the assessments for four of its properties in Anoka County. All of these properties included restaurants and salons that leased space from Walmart. Following the passage of the statutory deadline for disclosure of financial information, the County filed motions to dismiss the petitions with the Tax Court.

In its motions, the County asserted that the petitioner failed to timely produce financial statements, rent rolls, and lease agreements as required by law. The petitioner argued that the income generated by its lease agreements with the restaurant and salon tenants should be treated as "business income" as opposed to "rental income". In dismissing Walmart's four petitions, the Tax Court held that the petitioner's treatment of the restaurant and salon income as "business income" for its own purposes had no bearing on the requirement of the petitioner to abide by the mandatory disclosure requirements. Furthermore, the Tax Court made it clear that the agreements between the petitioner and its tenants provided the right for the tenants to occupy space within the properties in exchange for rent.

New York Court Reduces Valuation of Mall to Amounts Requested In Petition

***In the Matter of Champlain Centre North LLC v. Town of Plattsburgh*, (October 18, 2018) 2018 NY Slip Op. 07021.**

The owner of a mall in Plattsburgh, New York initiated Article 7 tax assessment review proceedings to seek reductions in value for the 2015 and 2016 tax years. The mall was originally valued at \$49,400,000 for both tax years. At the hearing, the mall owner presented an appraisal utilizing the income approach to value which opined to value at \$27,912,000 for 2015 and \$24,483,000 for 2016. The Town of Plattsburgh submitted an appraisal that opined to value at \$45,700,000 for both tax years. The trial court found value consistent with the mall owner's appraisal evidence.

On appeal, the appellate division determined that the mall owner met its initial burden of rebutting the presumptive validity of the tax assessment by presenting the appraisal of an experienced, certified appraiser who utilized an accepted method of valuation. The appraiser retained by the mall owner testified that he reviewed historical operations of the property, which demonstrated a substantial decline in retail sales and corresponding increases in vacancy rates, which were consistent with industry trends. The

declining sales resulted in lower base rents, higher vacancy and more tenant concessions. In contrast, the town's appraiser failed to account for declining occupancy and income or the potential loss of an anchor tenant. On review, the court determined that the trial court had an ample basis for determining that the mall's appraisal was the most credible. However, the court found that the trial court erred when it valued the property below the amount the mall owner requested in its petition, so the appellate division ordered the values be modified consistent with the petition.

North Carolina Property Tax Commission Disallows a County's Reassessment of Lowe's Properties in a Non-Reappraisal Year

In the Matter of Lowe's Home Centers LLC, case numbers 17 PTC 0146, 17 PTC 0147 and 17 PTC 0148, in the North Carolina Property Tax Commission.

The taxpayer appealed the assessed values for three of their home improvement retail properties following the 2015 tax year countywide reappraisal. The County mailed a notice to the taxpayer that the subject properties would be appraised and assessed at higher values for the 2017 tax year, a non-reappraisal year. The taxpayer appealed the County's decision to the County Board of Equalization and Review. Despite the Appellants' argument that the County lacked authority to change the appraisal of the properties in a non-reappraisal year, the Board of Revision upheld the County's revised 2017 tax year value. The taxpayer then initiated appeals to the North Carolina Property Tax Commission.

After hearing the arguments made by both the County and the taxpayer, the North Carolina Property Tax Commission found no support for the County's sole stated reason behind reassessing the properties for the 2017 tax year. The taxpayer's motion for summary judgment was affirmed and the 2017 tax year values were returned to the values reached as part of the County's 2015 tax year countywide reappraisal.

Pittsburgh Public Schools' Policy of Appealing Residential Assessments is Challenged in Violation Of PA Supreme Court Decision

Martel v. Allegheny County, case number 568 CD 2018 (pending in the Commonwealth Court of Pennsylvania)

This case was recently argued before the Commonwealth Court of Pennsylvania and concerns Pittsburgh Public Schools policy of appealing property tax assessments for residential homes that have been recently transferred at prices above the current assessment. In a class action suit, the class members are seeking to bar the policy of the school district, which singles out recent residential transactions as a basis to increase the value of these homes. The class members are seeking to have this policy barred based upon the Supreme Court's decision in *Valley Forge Towers v. Upper Merion Area School District*, (July 5, 2017) 163 A3d 962. In *Valley Forge* the Supreme Court determined that taxing authorities couldn't single out high value residential or commercial properties for assessment appeals, while ignoring other classes of undervalued residential homes. The class members argued that there is no economic analysis occurring when you have one home on the block that is appealed, where there are several others where the values haven't moved and aren't contested. The class members are seeking a declaration that *Valley Forge* prohibits taxing bodies from using these selected reassessments as an alternative to a countywide reassessment.