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Real Estate Taxable Status

I. Taxable Status

Taxing jurisdictions rely upon the assessed values of taxable properties when setting millage rates and levying taxes to balance budgets. The issue of taxable status was recently reexamined in the case of Sports & Exhibition Auth., 789 A.2d 316 (Pa.Cmwlt. 2001). In Sports, the property in question was purchased after the beginning of the 1999 taxable year. The Authority petitioned for tax-exempt status for 1999 and subsequent tax years. The Commonwealth Court determined that the Authority was not exempt for tax year 1999. In making its decisions, the Commonwealth Court reaffirmed the long-held position in W.G. Halkett Co. v. Philadelphia; 115 Pa.Super. 209, 175 A. 299 (1934) and Appeal of Title Services, Inc., 433 Pa. 535, 252 A.2d. 585 (1969), both of which held that taxable status is determined at the time the assessment is levied and the taxes are due.

Taxing jurisdictions and their solicitors should carefully review all exemption applications for the sales date. All properties taxable as of January 1st of each year should remain taxable for the entire year. Appeals which violate this mandate should be vigorously pursued. Moreover, the reverse situation should be given the same consideration by the taxing jurisdiction and solicitors. An

owner that purchases an already exempt property after the assessment date is entitled to maintain that exemption for the year in question even if the owner is no longer entitled to an exemption.

Moreover, Wilksburg Sch. Dist. v. Bd. of Prop. Assessment, 797 A.2d 1034 (Pa.Cmwlt. 2001), addresses “triggering events” for reassessment purposes during an assessment freeze. The Commonwealth Court held that a governmental unit must apply a uniform methodology when valuing property within its jurisdiction and must abide by “triggering” events, i.e., new building construction, improvements, or subdivisions.

Taxing jurisdictions must be aware of triggering events that would prompt reassessments by the County and add potential revenue to their budgets.

II. Standing

In Appeal from the Decision of Bd. of Prop. Assessment, 797 A.2d 414 (Pa.Cmwlt. 2002), and W. Mifflin Area Sch. Dist. v. Bd. of Prop. Assessment, 2002 Pa.Comm. LEXIS 514 a, sublessees were given the right to appeal their respective tax assessments pursuant to the language of the leases, the Court’s interpretation of an “owner” and the sublessees responsibility to pay real estate taxes. Although these cases are highly fact specific, it is important that taxing jurisdictions are aware of who is filing an appeal so a challenge may be brought as to an individual or entities who lack standing to file an appeal.

Closely related to the issue of standing is the issue of whether an entity is permitted to be a party to an appeal. The Court in West Mifflin, held that a sublessee had standing even though the sublessor was no longer a party to the action. Relying on Allegheny County Local Rule A503(e) which states “the filing of an appeal by any party shall act as an appeal by all parties”, the Court determined one party’s actions had no bearing on the actions of the other party. This same Local Rule was followed by the West Mifflin Court, in holding that a party did not waive its right to appeal when it sought intervention after an appeal to the Commonwealth Court was filed.

The impact of Local Rule A503(e) on taxing jurisdictions is a double-edged sword. Taxing jurisdictions who have missed appeal deadlines for any number of reasons are not precluded from participating in litigation and actively seek favorable assessed values even as late as an appeal to the Commonwealth Court. However, property owners also enjoy this same right and are permitted to seek assessed values in their favor. Further, taxing jurisdictions must prepare for the possibility that litigation will continue despite a discontinuance by one party from the appeal and the cost of litigation can reach beyond what was initially anticipated by the appearance of other parties who join in the appeal at a late date.

III. Approaches to Valuation

Traditionally, there are three approaches which are utilized in valuing real estate. The cost approach places a value on property based on the costs associated with the purchase of the land and the building of improvements on the land. The sales comparison approach places a value on property based on the sales price of similar properties. The income approach places a value on property based on the income generated by the property.

Recently, in Tom Clark Chevrolet v. Board of Property Assessment, (C.P. Allegheny, April 10, 2002), the Court ruled that net income is the proper measure of fair market value for investment properties or properties rented to tenants, but not for business properties. The Court held that it was a mistake to “say that the income approach . . . which starts with the rental value of the property, should be coextensive with the gross income of whatever business happens to be on the property.” For a proper assessment, the Court determined that the property’s value must be calculated based on hypothetical rents and expenses or comparable sales in comparable areas. Pursuant to this ruling, taxing jurisdictions must themselves, and instruct their appraisers to, look beyond net income and the net income approach when determining the value of property. Further precautions such as additional and/or refined discovery will have to be taken so that these factors will be taken into consideration when arriving at an opinion of value.