

Still Under Appeal

How to Achieve Resolution Despite Many States' Years-Long Tax Court Backlogs

By J. Kieran Jennings, Esq.

Outside of a handful of primary markets and property types, real estate continues to suffer. Yet in many jurisdictions, assessors have failed to decrease taxable values to keep pace with real estate market declines. As a result, savvy owners and managers have been appealing their assessments with ever-increasing regularity, weighing down local and state tax board and court dockets with a ponderous backlog.

In some communities, assessment appeals are now years behind. In litigious markets, the appeals themselves often last several years. Thus, tax cases are taking years longer to resolve at a time when taxpayers needed relief yesterday.

In Ohio, Pennsylvania and New Jersey, to name a few states, tax cases commonly wait on the docket for two or more years, but today some cases are unlikely to be resolved for four or more years.

On the other hand, in states like Florida and Texas, taxpayers are still getting relief at the informal and board levels. These states have annual assessments and are accustomed to a large number of appeals. Moreover, since assessors in those states have tended to keep pace with the changing market in annual revaluations, assessments have already been reduced in many instances.

The length of time it takes to resolve a case in a particular state often reflects at which stage of the appeal process most cases reach a resolution. States with a faster turnaround time are generally those that grant greater leniency for assessors to resolve issues.

Where greater flexibility exists, taxpayers with limited evidence can discuss the macro-economic changes that took place while offering specific evidence, allowing for a true give-and-take negotiation and resulting in fast, meaningful changes to tax assessments. Where assessors and boards are deprived of sufficient

latitude, assessment appeals tend to take on a court-like atmosphere where each fact is argued, often resulting in an appeal of the local board's decision. This litigation delay is compounded when other taxing authorities, such as school districts, intervene in the process.

A tax appeal backlog is a symptom of a system that disfavors taxpayers. There will always be a group of cases that are complex and require further appeal, or that involve taxpayers who are not fully satisfied. But delay is almost always against taxpayers' interests, while if a

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great number of taxpayers routinely appeal to a higher board or court, it is clear they did not get a proper result at the lower level.

Backlog is unfortunately viewed as the problem, and as a result administrators address the backlog and not the underlying issue. For instance, some states are shortening the trial time of a case. For commercial cases, the taxes contested are often in the tens or hundreds of thousands of dollars, having the effect of reducing taxpayers' investment value by millions of dollars.

In Kansas, there has been talk of potentially limiting trials to a half day. That may be insufficient time for cases involving complex commercial properties. In Ohio, the tax commissioner has proposed a small-claims section to alleviate pressure on court time. Several Pennsylvania counties are turning to arbitration,

with great success. Other states look at funding or ease of filing as the problem, and are imposing higher filing fees to either raise funds or dissuade taxpayers from filing appeals.

Navigating the Logjam

The key to successful litigation in a state with significant backlog is to consider that backlog at the outset and to determine if the benefits of a quick result outweigh a more satisfactory result months or years later.

Local counsel is a key to understanding the ebb and flow of court dockets, as well as understanding opposing counsel's needs and wants, to be able to structure the best deal possible for a taxpayer. In some instances, taxpayers can take advantage of the backlog when there is a large pending refund. It may be possible to negotiate a reduction in the refund by taking it as a tax credit over time instead of having the possibility of that refund being reduced dramatically or taken away completely in a trial.

Finally, in an environment where government fiscal needs may be in direct opposition to taxpayers' need for fairness and uniformity of taxation, it is helpful to get involved with regional and state chambers of commerce and trade groups. These organizations are working toward solutions to real taxation problems and not just the issue of backlog.

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